

84
No. 2088

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

APOSTLES ON APPEAL

GUST FONDAHN,

Appellant,

vs.

SCHOONER "C. S. HOLMES," her
tackle, apparel, furniture, etc.

Appellee.

TRANSCRIPT OF RECORD

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

Filed

DEC 8 - 1915

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*In the District Court of the United States for the Western
District of Washington, Northern Division.*

GUST FONDAHN,	} No. 2539
<i>vs.</i>	
SCHOONER "C. S. HOLMES," Etc.,	
<i>Respondent.</i>	

NAMES AND ADDRESSES OF COUNSEL.

DANIEL LANDON, Esq., Attorney for Libelant and Appellant, 1054-5-6 Empire Building, Seattle, Washington.

RICHARD A. BALLINGER, Esq., Attorney for Respondent and Appellee, 901 Alaska Building, Seattle, Washington.

ALFRED BATTLE, Esq., Attorney for Respondent and Appellee, 901 Alaska Building, Seattle, Washington.

R. A. HULBERT, Esq., Attorney for Respondent and Appellee, 901 Alaska Building, Seattle, Washington.

BRUCE C. SHORTS, Esq., Attorney for Respondent and Appellee, 901 Alaska Building, Seattle, Washington.

*In the District Court of the United States for the Western
District of Washington. Northern Division.*

GUST FONDAHN,	} No. 2539.
<i>Libellant,</i>	
vs.	
SCHOONER "C. S. HOLMES," her tackle, apparel, furniture, etc.	
<i>Respondent.</i>	

STATEMENT.

TIME OF COMMENCEMENT OF SUIT.

August 29, 1913.

NAMES OF PARTIES.

Gust Fondahn, Libelant.

Schooner "C. S. Holmes," etc., Respondent.

DATES WHEN PLEADINGS WERE FILED.

Libel: August 29, 1913.

Amended Libel: January 12, 1914.

Answer: April 2, 1915.

ISSUANCE OF PROCESS AND SERVICE THEREOF.

The libel herein was filed in the above-entitled Court on August 29, 1913. Process was issued on that day and delivered to the United States Marshal, for the seizure of the said Schooner "C. S. Holmes." Bond for Release was filed and approved September 6, 1913, said Schooner being bound unto the United States Marshal in the sum of seven thousand dollars, with National Surety Co., a corporation, as surety.

REFERENCE TO COMMISSIONER.

On October 23, 1913, it was stipulated that testimony might be taken at this time by either party as though the cause had been referred after issue joined. On June 15, 1915, said Commissioner duly returned the testimony taken before him in said cause into Court and the same was on said day filed in the office of the Clerk thereof. On August 4, 1915, an Order was signed by the Court permitting further testimony to be taken, and on September 2, 1915, said Commissioner duly returned the supplemental testimony taken before him in said cause into Court, and the same was on said day filed in the office of the Clerk thereof.

The cause was submitted to the Court on documentary evidence.

FINAL DECREE.

Final Decree, in accordance with opinion of the Court, was filed October 4, 1915, which decree was signed by Honorable Jeremiah Neterer.

NOTICE OF APPEAL.

Notice of Appeal, with admission of service thereof, filed October 4, 1915.

Citation filed October 18, 1915.

*In the District Court of the United States for the Western
District of Washington, Northern Division.
In Admiralty.*

GUST FONDAHN,

Libelant,

vs.

SCHOONER "C. S. HOLMES," her
tackle, apparel, furniture, etc

Respondent.

No. 2539

AMENDED LIBEL.

TO THE HONORABLE JUDGES OF THE ABOVE
ENTITLED COURT:

The amended libel of Gust Fondahn, of Port Townsend, Washington, late seaman of the American schooner C. S. Holmes, whereof Harry Thompson now is or late was master, against the said ship, her tackle, engines, apparel and furniture, and against all persons lawfully intervening for their interest therein, in a cause for damages for personal injuries and wages, civil and maritime, sheweth:

I.

That during the month of December, 1912, the Libelant signed articles as an able seaman to make a trip on board the Schooner C. S. Holmes from San Francisco, California, to Everett, Washington, and return at forty-five dollars per month.

II.

That while on the return voyage and while performing his duty as a seaman, on the Third of January, 1913, in the afternoon a heavy storm arose and the ship sought

shelter in Neah Bay. A tug was sent out to look at the condition of the weather, and came back and reported that it was not fit for any vessel to go out on account of the mountain of sea running at twelve o'clock noon. With the weather conditions unchanged the Steamer Goliath gave the said "C. S. Holmes" a steel cable of five inches thickness which was taken on board and made fast on the forward end of the said ship by being placed three times around a square bit; and by order of the captain of the said ship "C. S. Holmes," the steamer Goliath towed her to sea, it taking the steamer seven hours to tow the "C. S. Holmes" a distance of eight miles.

III.

That at about seven o'clock and while weather conditions were unchanged the said steamer blew her whistle to let go the wire; the captain of the "Holmes" gave general orders for everybody to go forward and take hold of the wire, the crew held back; when they received the orders the second time everybody went forward, but none went to the wire except the libelant; the captain was standing about four feet above the libelant where he could see everything goin on; libelant being in a position where he could not see the condition of the wire, libelant inquired of the captain how the wire was on the bow, and he was told by the captain that the wire was slack and that everything was all right and to let go, and libelant let go the lashings and went away as quickly as possible to avoid danger. The wire was tight

and sprang back and hit libelant, causing a compound fracture of libelant's right arm, paralyzing and bruising his side.

IV.

That the captain gave orders to go back to Port Angeles, libelant requested to be taken to Port Townsend but was informed that it would cost \$100 to do, and that there was a marine doctor at Port Angeles and so refused; they arrived at Port Angeles at three o'clock in the morning; the libelant again requested to be taken to Port Townsend to the marine hospital and the captain again refused; at about seven or eight o'clock the captain took libelant to Dr. Taylor, wrote out a permit, gave it to the said doctor, informing him at the same time that it was good for all expenses incurred; the said doctor asked the captain to explain the permit, the captain then told him, "I have nothing to explain, the man is in your care now and he is out of my hands," at the same time laughing at the doctor in a manner that would indicate that he had knowingly deceived him. The captain knew all the time that there was no marine doctor at Port Angeles, and that the permit was valueless for any purpose other than to be used for admission at the Port Townsend Marine Hospital. The captain deliberately put libelant off at Port Angeles for the purpose of getting rid of him, knowing and intending that he would at most only receive temporary relief; at the same time he knew, or should have known, that libelant needed

prompt and permanent attention on account of the condition of his injuries.

V.

That the libelant was taken to the office of the doctor and in the presence of the captain an attempt was made by the then unwilling doctor to fix him up temporarily, which was not successful, and two days later while libelant was still in a helpless condition the doctor requested the libelant to leave. Libelant was unable to move; he received no more attention or treatment for six days longer, when with considerable of effort he made his way to Port Townsend. During the time he was at Port Angeles blood poison set in, and after two months' treatment at the marine hospital at Port Townsend an attempt was made to set the bones, but the ends of the bones so broken had commenced to decay by reason of treatment being neglected when injured, and the arm was in such condition that the plates used to hold the bones together broke loose and the bones are still continuing to decay.

VI.

That by reason of the treatment being delayed as aforesaid the bones will never knit together but will continue to be a source of great annoyance, pain and suffering to the libelant; that during all the times herein mentioned the libelant has suffered excruciating pain, humiliation and inconvenience, at times despairing of his life.

VII.

That prior to said injuries libelant was an able bodied man of the age of forty-five years, capable of and was earning the sum of forty-five dollars and subsistence; that libelant will be put to great expense in securing medical and surgical treatment during his entire life; that ever since said injuries he has been and now is wholly incapacitated and he believes will ever be so.

VIII.

That libelant has paid the sum of thirty dollars to said doctor at Port Townsend for the service so received.

IX.

That libelant was paid his wages up to the time he was injured; that he is entitled under the circumstances herein set out to one month's pay in addition to said sum.

X.

That by reason of the injuries received as aforesaid the libelant is damaged in the sum of \$4,000.00.

That by reason of the failure of respondent to provide libelant proper medical and surgical treatment he is damaged in the sum of \$10,000.

That libelant is entitled to the return of the \$30 paid by him for medical treatment.

That he is further entitled to \$45 for wages.

XI.

That the vessel was at the time this libel issued

lying at Winslow, in the waters of Puget Sound in Kitsap County, Washington.

XII.

That all and singular the said premises are true and within the admiralty and maritime jurisprudence of the United States and this Honorable Court.

Wherefore, this libelant prays that process issue in due form of law according to the course of this Honorable Court in causes of admiralty and maritime jurisprudence against the said Schooner; that the said ship may be condemned and sold, and that the Court be pleased to grant to this libelant such other and further relief as in law and justice he may be entitled to.

DANIEL LANDON,
Proctor for Libelant.

STATE OF WASHINGTON, {
County of King. } ss.

Gust Fondahn, being first duly sworn, on oath says: That he is the libelant in the above entitled action; that he has read the foregoing libel, knows the contents thereof and believes the same to be true.

GUST FONDAHN.

Subscribed and sworn to before me this 7th day of January, 1914.

(Seal) DANIEL LANDON,
Notary Public in and for the
State of Washington, resid-
ing at Seattle.

Service of the within Amended Libel by delivery of a copy to the undersigned is hereby acknowledged this 9th day of January, 1914.

BALLINGER, BATTLE, HULBERT & SHORTS.

Indorsed: Amended Libel. Filed in the United States District Court, Western District of Washington, Northern Division, January 12, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

*In the District Court of the United States for the Western
District of Washington, Northern Division.
In Admiralty.*

GUST FONDAHN,

Libellant,

vs.

SCHOONER "C. S. HOLMES," her
tackle, apparel, furniture, etc.

Respondent.

No. 2539.

ANSWER.

Comes now George E. Billings, agent for the owners of the schooner "C. S. Holmes," and claimants herein, and for answer to the amended libel herein denies and alleges:

I.

Said claimants admit the allegations contained in paragraph I of said amended libel.

II.

Claimants deny each and every allegation contained in paragraphs II and III of said amended libel, except that it is admitted that the libellant was injured while working on said schooner "C. S. Holmes" as a seaman.

III.

Said claimants deny each and every allegation contained in paragraph IV of said amended libel, except that it is admitted that the captain of said schooner "C. S. Holmes" took libellant to Dr. Taylor, at Port Angeles, for treatment.

IV.

Said claimants deny each and every allegation of paragraph V of said amended libel.

V.

Said claimants deny each and every allegation contained in paragraph VI.

VI.

Said claimants deny any knowledge or information sufficient to form a belief as to the allegations of paragraph VII of said amended libel and therefore deny the same.

VII.

That said claimants deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph VIII of said amended libel, and therefore deny the same.

VIII.

Claimants deny each and every allegation contained in paragraph IX of said amended libel, except it is admitted that libelant's wages were paid up to the time he was injured.

IX.

Said claimants deny each and every allegation contained in paragraph X of said amended libel, and deny that libelant has been damaged in the sum of four thousand dollars (\$4000) by reason of the injuries received as alleged in said paragraph, or in any other sum what-

soever, and deny that libelant was damaged in the sum of ten thousand dollars (\$10,000) or any other sum whatsoever by reason of the failure or neglect of the said claimants or respondent by reason of the failure to provide libelant with proper medical and surgical treatment, as alleged in said paragraph, or at all.

For a FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE to libelant's second cause of action, claimants allege:

I.

That the condition of libellant's arm, if he has failed to recover from the injuries sustained, has been due to his own fault, carelessness and negligence in failing to follow the directions of the doctors at Port Angeles, in whose care the captain of said schooner left libellant, and in failing to exercise reasonable care and diligence after voluntarily leaving the doctors at Port Angeles, in going immediately to other competent doctors and surgeons, and in failing to follow the directions and treatment prescribed by the doctors at Port Angeles, in whose charge and care libellant was left by the master of said vessel.

Wherefore, respondent and claimants pray that libellant take nothing by reason of his amended libel, and that said action be dismissed.

BALLINGER, BATTLE, HULBERT & SHORTS,
Proctors for Respondent and Claimants.

STATE OF WASHINGTON, }
County of King, } ss.

ROBT. A. HULBERT, being first duly sworn, on oath deposes and says that he is one of the proctors for respondent and claimants in the above entitled action, and makes this verification for the reason that George E. Billings, agent for said respondent and claimants, is a non-resident of the state of Washington; that he has read the foregoing answer to amended libel, knows the contents thereof, and that he believes the same to be true.

ROBT. A. HULBERT.

Subscribed and sworn to before me this 1st day of
April, 1915.

R. G. DENNEY,

Notary Public in and for the State of Washington,
residing at Seattle.

Copy of within answer received and due service thereof acknowledged this 2d day of April, 1915.

D. LANDON.

Indorsed: Answer to Amended Libel. Filed in the United States District Court, Western District of Washington, Northern Division, April 2, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy.

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*In the District Court of the United States for the Western
District of Washington. Northern Division.*

GUST FONDAHN,	$\left. \begin{array}{l} \textit{Libelant,} \\ \\ \\ \textit{Respondent.} \end{array} \right\}$	No. -----
vs.		
SCHOONER "C. S. HOLMES," her tackle, apparel, furniture, etc.		

To the Honorable Judges of the Above Entitled Court:

On this 23rd day of October, 1913, the libelant appeared in person and by Mr. Daniel Landon, his proctor; the claimant appeared by Mr. Bruce C. Shorts, one of the proctors for said claimant. Thereupon it was stipulated that testimony may be taken at this time by either party as though the cause had been referred after issue joined. It being understood that neither party waives any right by the taking of this testimony prior to the settlement of the pleadings.

LIBELANT'S TESTIMONY.

GUST FONDAHN, the libelant, being duly sworn, testified in his own behalf as follows:

Q. (MR. LANDON). You are the libelant in this case?

A. I am.

Q. And was on the schooner C. S. Holmes?

A. Yes sir.

Q. Who was Captain at that time?

A. Captain Thompson.

Q. When did you sign on the C. S. Holmes?

A. The beginning of December, as near as I can recollect.

Q. 1912?

A. Yes sir.

Q. Where?

A. San Francisco.

Q. And where were you bound?

A. Going from Everett back to San Francisco.

Q. What happened on or about the 3rd of January, 1913?

A. Well, it was blowing a gale of wind, and we had to go and seek shelter in Neah Bay. And the tug went out to look at the weather in the forenoon, and came back and reported that it was not fit for any vessel or anybody to go out on account of the mountainous sea running. This was 11 o'clock he reported that to our captain. At 12 o'clock we had our dinner, and our anchor cable broke. We lost 15 fathoms of cable on one anchor. We dropped in another anchor and hoisted signals of distress and the steamer Goliath came to our help and gave us a steel cable of five-inch thickness. We got that on board and made fast on the forward end of the ship. We had three turns around a square bitt, about four inches wide. She took us to sea. We expected to find a better shelter, but she took us to sea and it took the steamer seven hours to tow us about eight miles. In ordinary weather she could do the same work in one hour—this was on account of bad weather.

MR. SHORTS: I object, and move that this testimony be stricken on the ground that it is incompetent, irrelevant and immaterial. It does not have anything to do with the issues in the case.

A. (Continuing): At seven o'clock at night the steamer blew the whistle to let go the wire. We got the general order for everybody to go forward and take hold of the wire. They held back for a minute or so and got the order the second time.

Q. By whom?

A. By the captain. Everybody went forward, but nobody went to the wire except myself. I was ahead of the rest, and they stopped about eight feet away from me, in a safe place. I started to let go the lashings from the wire. During that time I expected help, but no help was coming, and the captain failed to send the men there, and I had no time to linger, so I came to the conclusion to let go the wire, and, as I done so, I went away as quick as possible, and the wire sprung back and hit me, which could be prevented if I had had everybody to help me with the wire. During the time I was on board that vessel I let go that wire twenty-four times, and everybody was there every time we let go the wire, as it was necessary. I got my arm broke and my side paralyzed, bruised and stiff, and the captain told——

Q. Before you go into that I would like to ask a few questions. At the time you went to let loose the wire and at the time you did let it loose, did anybody order you to do it?

A. We got orders twice for all hands on board to go and let that go.

Q. Who executed the orders?

A. The captain was on deck. When the captain is not on deck the mate does it. In this case the captain done it.

Q. Where was the captain at the time you let go of the wire?

A. The captain was standing eight feet away from me and talked to me right along. He was standing above me about four feet, so that he could see everything going on. I asked the captain once how the wire was over the bow, and he told me the wire was slack—I could not see, and he said everything was all right to let go.

Q. When was that?

A. It was just before I started to let go the lashings. I would not let go the lashings before I knowed the wire was slack.

Q. Before you let go you said something about not having any time to linger. What did you mean by that?

A. The ship was taking the sea right along. This is the reason the men did not come there, they were afraid to go there. She was taking in water, and if I was going to make fast the lashings again it would take a long time and I would get drowned to stay too long, and I had to let it go and had to run.

Q. Now continue your former answer.

A. The captain gave orders then to go back to Port Angeles. I asked the captain why he wanted to go to

Port Angeles. We had the whole night to go to Port Townsend, and the captain told me we would go into Port Angeles, he says, and you get a doctor there, it will be too much expense, it will cost us about \$100 to go to Port Townsend. I asked the captain if there was a marine doctor in Port Angeles, and he says, yes. He says the captain of the tow boat Prosper told me that there was one. The captain came into Port Angeles at three o'clock in the morning, and he had to wait until daylight before we could get ashore, it was somewhere around seven o'clock. The captain took me up to Dr. Taylor, Taylor brothers, which I found out was no marine doctor. The captain wrote out a hospital permit for me. This permit is only good for me to be accepted in the marine hospital at Port Townsend. The captain says here is a paper, doctor, to send him to the marine hospital at Port Townsend, and all you have to do for him, and that will square all your expenses. After a minute the doctor asked the captain, he says, I want you to explain this piece of paper. The captain told him, I have got nothing to explain, the man is in your care now and he is out of my hands. After that they took me up to the doctor's hospital and I got chloroformed, and they tried to fix my arm temporarily, as far as I knew. I got out of the chloroform and I recollect the captain was there. But I would not be responsible to give evidence as to what happened. Well, two days after I was in bed, I was helpless, could not get up. The doctor came in the morning and piled my clothes there and wanted to know if I could

get up off the bed. I told him, no, doctor, it is impossible, I cannot move. I says, what is the matter, doctor, anything going wrong? He say no, and he went out. And I spoke to his brother the same day in the afternoon and he told me the truth, he says we find out that the captain gave us a false statement about this piece of paper, and we can get no money from the marine hospital, and the sooner you get out of bed it will be cheaper for you. I explained to the doctor that by the marine law I was allowed to get a doctor and hospital and medical attendance. He said I don't know nothing about that, for to clear ourselves we will have to look for the pay from you. Well, I was thinking about my arm. I could not get no more treatment, and I considered it best to get up as quick as possible. I asked the doctor, in case I got well enough to get up, how much the bill would be, and the doctor told me he would make it cheap under the circumstances, we will only charge you thirty dollars. I told the doctor I would put the money up but I would not pay the bill. I got a receipt for the money. On a Saturday, eight days afterwards, the nurse helped me up and get on my legs. I was able to walk around in there, but I could not sit down. I got the hospital, to the marine hospital, and the doctor asked me why I did not come there first. He says your arm is in such shape that I could not do anything with you. My arm was all festered. It took two months and five days before they could set my arm, before my arm was in condition to set. The first week I came to the marine hospital they took

an X-ray picture of my arm, and the fore-bone had overlapped.

MR. SHORTS: I object as not the best evidence.

Q. Did you turn those X-ray pictures over to me?

A. You have them, yes; I turned them over with all my papers.

MR. LANDON: I will produce the pictures later.

Q. You may continue now.

A. The bone was overlapped and the arm contracted and it was about an inch shorter. And on the 8th of March I got operated on and they plated my arm bones together, and the arm was in such shape and so contracted the plate won't stand. The joints of the bone cave in. And the doctors themselves think there is a cave-in in one bone.

MR. SHORTS: I object to any statement as to what the doctors think. The best evidence would be the doctors themselves. I move to strike the statement and object to any further testimony along that line.

Q. What did they do to you?

A. The doctors?

Q. Yes.

A. They operated on me. They put plates in, silver plates. And the arm was contracted in such shape it would not stand it; it broke loose again and caved in.

Q. What did they do then?

A. It has been there ever since. I was in perfect physical health, for the abrasions healed up in eight days; there is nothing against me. I blamed the captain——

Q. You are still in the hospital there?

A. I am still there. From the 10th day of January. I got hurt the 3rd of January.

Q. Can you use your arm at the present time?

A. My arm for labor is permanently useless. I cannot lift nothing with it.

Q. How old are you?

A. Forty-one past, very near forty-two.

Q. What occupation have you been following?

A. Been going to sea all my life.

Q. And what wages were you earning?

A. Forty-five dollars a month.

Q. Including board on the vessel, of course?

A. Yes. I want to add that I wrote twice down to San Francisco.

Q. What correspondence, if any, have you had with the owners of the ship?

A. There was through the Union a man representing me to the owners, Mr. Tennyson representing the ship's owners. The man who was representing me in Port Townsend was Miller. I was helpless, I could not write; as far as that goes I could not write yet.

Q. Did you see the letters?

A. He showed me the letters, and told me that Tennyson was the representative of the ship.

Q. Go ahead.

A. The doctor in Port Angeles he sent a letter to me and told me he wrote to the captain and explained the case to him. I never got the money. But he promised, on

one condition, if I wanted to sign an agreement not to prosecute them and to get two witnesses to sign, and he gave me a typewritten sheet of paper to that effect. That is about all of my statement.

Q. Have you anything further that you want to say about this matter?

A. Yes sir. I believe that the captain for to avoid paying of the doctor bill told the doctor, gave the doctor a false statement.

MR. SHORTS: I object as incompetent, irrelevant and immaterial. I have no objection to his stating any fact, but object to his beliefs.

MR. LANDON: I have no objection to the last statement being stricken.

Cross Examination.

Q. (MR. SHORTS): You say you were struck on

A. Yes sir.

Q. And that was about six o'clock in the afternoon, was it not?

A. It was after supper, somewhere around seven o'clock.

Q. You were about ten miles off Cape Flattery at the time, were you?

A. Eight or ten. Right between Flattery and Cape Beale. It was bad weather. When you are working you cannot judge these things exactly. The biggest tug on the Sound, the Goliah, a 1600 horsepower tug, she could have gone out in one hour, but it was bad weather and we were underneath the water more than on top

of the water. She took fire twice in the afternoon beside this trouble, and our place was to seek shelter and wait another day.

Q. Now, as soon as you were injured, Mr. Fondahn, where did you go; down in the fore-castle?

A. I got knocked down.

Q. But after you got up?

A. I could not get my breath back for quite a while. Then the men came down and asked me how I felt. A certain one says I thought you were killed. I didn't know where you went, I thought you went overboard. I says, no, I am not killed, I landed on my feet, right down below, I don't know how. Things like that go so quick, but I did not lose my senses.

Q. You landed on your feet. Then where did you go?

A. I stood there until the men came around, and the captain came around.

Q. Then what did you do?

A. I went to the fore-castle.

Q. And you got in a berth or a bunk there?

A. This gentleman helped me in the berth. I was helpless.

Q. What did the captain do for you, did he treat your arm?

A. He washed my arm and put a piece of a kind of bandage on it.

Q. He took the best care of you that he could, bandaged you up?

A. Under the circumstances, yes.

Q. Put some splints on your arm and bandaged it?

A. A stick on one side and a piece of paper on the other.

Q. He did the best he could under the circumstances?

A. Well, anybody in the forecastle could have done the same thing.

Q. The captain did all he could to help you, that is they all did, didn't they?

A. Yes.

Q. And then the captain put his ship about to go back into the straits?

A. Yes sir, that is right.

Q. How long was it before you picked up a tow going back in?

A. Well, I could not judge. This Goliah is a big boat and she came out and she went right back into Neah Bay, and she seen our light. She did not know what was coming in. I spoke to a man that belonged to the boat and that is how I know. But anyhow she came out to us. I was down below and all I know is what I heard.

Q. Never mind if you did not see it. I will prove that by somebody else who saw it. Then you got into Port Angeles about six the next morning, was it not?

A. Somewheres around three in the morning. Probably a little after three.

Q. You went ashore from the Holmes in a tug boat?

A. I did.

Q. And as soon as you got ashore, you and the captain walked up to the doctor's office?

A. Yes, we met the doctor on the street, I believe.

Q. What time did you go ashore?

A. We met the doctor on the street just at daylight. I could not tell you exactly the time. I was in pain and everything, and I was thinking more about my arm than the time. We came ashore and I remember it was about daylight at that time of the year was seven o'clock in the morning.

Q. Then after some little time in the doctor's office you went to the hospital at Port Angeles?

A. Yes sir.

Q. And it was at the hospital that you were chloroformed and your arm was set by the doctors there?

A. My arm was not set. The picture shows my arm was not set. He fixed my arm the best he could, I suppose, at the time, temporary.

Q. Now the captain came up to the hospital there in Port Angeles to see you along about noon, didn't he, the same day you went there?

A. There was no clock in the place where I was lying. I was under chloroform and I did not know anything about the time. I know the doctor told me that about ten o'clock I was chloroformed. I was only from under the influence and I could not tell you exactly.

Q. You remember the captain being there?

A. Yes, I remember that.

Q. Now whatever money you had you turned over to the doctor there?

A. I did when I first came in. I gave it to the nurse before I was chloroformed. I had no other place to put it.

Q. What date did you leave the hospital at Port Angeles?

A. The following Saturday morning, that was eight days.

Q. You were at the hospital in Port Angeles eight days?

A. Yes sir.

Q. During that eight days the doctors treated you and the nurse attended you there, did they?

A. Yes, that is what I was in the hospital for.

Q. Then after you left the hospital you took a boat and went over to Port Townsend?

A. I did. I had to stand on my feet right along. I could not sit down. If I sat down I could not get up again. My legs were all right.

Q. What time in the day did you leave Port Angeles to take the boat for Port Townsend?

A. About half past one at noon.

Q. As soon as you got to Port Townsend what did you do, walk to the marine hospital?

A. Yes.

Q. Did you have with you the permit that the captain had made out?

A. Yes. You cannot get in the hospital without. That is the only thing it is good for.

Q. And where did you get the permit?

A. The doctor had to give it to me.

Q. The doctor in the hospital at Port Angeles gave you the permit that the captain had made out and given to him?

A. Yes.

Q. That permit was accepted at Port Townsend all right? at the Marine Hospital there?

A. That is the only thing it is good for.

Q. You have been taking treatment at the Marine Hospital at Port Townsend ever since?

A. Ever since, yes. I am under the hospital care now and will be for I do not know how long.

Q. Now the only money that you ever paid out for medical treatment or care or hospital expense was the thirty dollars that you paid the doctor at Port Angeles?

A. Yes, and the matter of a dollar down to Port Townsend.

Q. The dollar fare going from Port Angeles to Port Townsend?

A. Yes, and I think by law I am entitled to a month's pay beside.

Q. You were paid your wages, were you, on the voyage?

A. Yes, up to the time of the accident.

Re-Direct Examination

Q. (Mr. Landon). Did you have an X-ray picture taken of your arm?

A. Where?

Q. At Port Townsend.

A. No, not at Port Townsend, but at Fort Worden, the military reservation out there. They have no X-ray machine in the hospital.

Q. When was this taken?

A. This was taken seven weeks afterwards. This other one was taken the first week I was in Port Townsend.

Q. This one was taken the first week you came there?

A. Yes. During the first days I was there.

Q. I show you this picture which has been marked "A" for identification, and ask you what that shows?

A. This is the state of my arm when I came to the Marine Hospital at Port Townsend.

Q. Now this picture, marked "B" for identification, state what that shows?

A. That is a picture of my arm after seven weeks, after the operation.

Q. That was after the operation?

A. Seven weeks after the operation at Port Townsend.

Q. It has not been operated on since that time?

A. No, they cannot do it yet. There is motion in the joints, but they won't do anything before they get connections stronger; sometimes it takes a long time.

Q. Where was this taken?

A. Same place, Fort Worden.

Q. Did you go out there to have this taken?

A. Yes.

Q. I show you this paper that has been marked "C" for identification, and ask you what that is?

A. That is a paper I got sent from the Billings office.

Q. You never signed that?

A. No, I did not sign that. That paper explains itself.

(Witness excused from the stand.)

Recess taken.

Seattle, Wn., October 28, 1913.

PRESENT:

Mr. Landon, for the Libelant.

Mr. Shorts, for the Claimant.

LUDWIG HULST, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Landon). Where do you reside?

A. I live over on Seneca street, No. 84.

Q. What is your business?

A. I am a sailor.

Q. Were you on board as one of the seamen on the C. S. Holmes when Gust Fondahn got injured?

A. Yes, sir.

Q. Just go ahead and tell what took place?

A. Shall I start when we left Neah Bay? When we came into Neah Bay we went in there for bad weather;

about noon time we lost an anchor and we got out the other anchor, and got the flag up for the steamboat, and a steamboat came alongside and put a big cable on board and took us to sea. Then, when we got out to sea, it started to get dark. At last the whistle blowed to let go the cable, and the captain called us all aft, and then he told us to let go the cable. And when we came up there he went down there to take off the lashings, we were all standing there, we were kind of scared to go down; there was a high sea and the water was coming over all the time, and he cut the lashings and he could not do nothing else, and he jumped away but did not get far enough away and the cable threw around and knocked him down and he got his arm broke. We went down and helped him into the forecastle where we lived, and started to wash his arm. The captain went to the deck and put the boat about, put the vessel around again to go in.

Q. Go ahead and tell what happened then?

A. When the captain went around, he came down again, and Gust says where are you going, captain? And the captain says I guess I will go to Port Angeles, there is a doctor there. Gust says, why don't you go and take me right up to Port Townsend, so that I could get in the hospital and everything would be clear. After while the captain says, I don't want to go up there, it would cost me a hundred dollars more. Of course he didn't say nothing more then, he was almost all in, and I was washing his arm and everything. And I asked

the captain for something to bandage to put around his arm and the captain didn't have none, so Gust he had some small clothes in a kind of sewing bag and I got hold of that and I put that around his arm. And I put some papers on and the bandage around. And we went in to Neah Bay. And the big tug that took us out came out and asked our captain what was the matter. And the captain says we got a man badly hurt. He says where do you go to now? And the captain says I want to go to Port Angeles. Well, he says I can take you up there if you want. No, says the captain, you are too big for us; I don't want you, but you can have the Prosper come and let her take us up, she is a smaller boat, she is not got so big a cable, and the Prosper came out and told our captain to lower down the sail and asked us if he wanted to go to Angeles, and he says, yes, I want to go to Angeles; there is a doctor there? And the captain of the Prosper said, yes, there is a doctor there in Angeles. Well, we came up. I could not say exactly the time, but I suppose it was a little before three or a little after three in the morning when we came to Port Angeles. We just lowered down the sail and we all went in to bed to sleep until daylight. As soon as daylight we got up and had breakfast and the tug boat came alongside, and they took Gust on shore, and what happened after he got ashore I do not know.

Q. Now, did you ever have any conversation with the captain of the C. S. Holmes?

A. I had when we came out to sea again.

Q. What was that conversation?

A. I asked him how Gust was getting along, and the captain says, he is all right, the doctor told me there was just a clean break, just broke clean off and it would be all right pretty soon. That is what he told me and I said to him one day that doctor in Port Angeles is not a marine doctor. Well, the captain says, I don't think he is, but he is just as well off there as he would be anywhere else. But the captain knowed there was no marine doctor there, and knew that before we went in.

Cross-Examination.

Q. (Mr. Shorts.) When you were sailing back up the straits after the accident, and the big tug first came out, did you hear your captain say anything to the captain of the big tug?

A. That spoke to him?

Q. Yes.

A. Yes, I was standing at the wheel right alongside, about five or six feet between me and the captain.

Q. Did you hear your captain call to the captain of the Goliah and ask him if there was a marine doctor at Port Angeles?

A. No, he did not ask for any marine doctor. He says there is a doctor up in Port Angeles, that is the captain from the tug says there is a doctor up there.

Q. And when the tug Prosper came out later on, did you hear your captain call out to the captain of the Prosper and ask if there was a marine doctor at Port Angeles?

A. No, sir.

Q. You did not go ashore with the captain at Port Angeles?

A. No.

Q. When did you leave the schooner Holmes?

A. Left the 17th of February this year.

Q. Did you make another voyage on her after the one Fondahn was hurt?

A. I made one voyage afterwards.

Q. One more voyage?

A. Yes, sir.

Q. What vessels have you been on since?

A. Oh, I have been on the steam schooner Fairhaven and the steam schooner Centralia, and I have been on the barkentine John Smith.

Q. Well, how long had you been on the Holmes before Fondahn was hurt?

A. I came aboard the Holmes about the 20th of October, some time like that, I could not say exactly.

Q. How long have you known Fondahn?

A. Just when I came aboard the Holmes.

Q. Have you seen him since?

A. Not since the other day up there.

Q. Did you see him after the accident very shortly?

A. Right after he got hurt, yes. I helped get him in his bunk and washed his arm and helped about the bandage.

Q. After he was hurt you went down to the fore-castle and the captain washed his arm and dressed it up the best he could, didn't he?

A. Well, all we had there, yes, he did, but we did not have nothing to fasten up the arm with when it comes to that.

Q. Well, the captain put some splints on and banded it up and washed it?

A. Yes, he put some newspapers, yes, he put splints on, too.

Q. You knew as soon as the captain put his ship about after the accident that he was going back to port to get a doctor to attend to Fondahn?

A. Yes, I knowed that. Well, the captain told me that before he went on deck, he said to the crew, you, look after Gust for a few minutes, I have to go up and get the vessel around. I was on deck before, I had to go to the wheel after Gust got hurt, I was just helping out there about half an hour and then I had to go to the wheel.

Q. How long have you been going to sea?

A. I have been going to sea fifteen years, close to it.

Q. You have been out to sea in weather that was a good deal rougher than it was at this time?

A. Yes, I have been at sea, out in the open sea, but I have not been sailing out when it was as rough as that now, close to shore, it is a little worse than anything else when a vessel is not quite under sail.

Q. There are marine doctors, no doubt, in many of the ports on Puget Sound and on the coast where there are no marine hospitals?

A. There is not so very many marine doctors on the Sound. There is only just a few doctors.

Q. There is a marine doctor at Seattle.

A. Yes, there is a marine doctor at Seattle.

Q. Tacoma?

A. Tacoma.

Q. Bellingham?

A. No, there is no marine doctor in Bellingham—I don't know. I know there are some places with no marine doctor. Now in Port Angeles that is a small place and there are hardly any vessels come in there.

Q. Have you ever been sent to a marine doctor for treatment?

A. Yes, I have been.

Q. Where?

A. Honolulu.

Q. Ever on this coast?

A. No, not up here.

Q. Now this tug Prosper that took you up and towed you to Port Angeles, was not a very large tug, was she?

A. No, she is one of the smallest on the sound that does towing of vessels.

Q. And if a blow were to come up between Port Angeles and Port Townsend, it might have taken you six or eight hours to go from Port Angeles to Port Townsend?

A. It might have taken us six hours if it blowed heavy, but it has to blow heavy.

Q. It was pretty squally weather at that time?

A. No, it was not.

Q. But squalls do come up there?

A. The squalls the day before, but it was nice and clear and starlight all over when we came up.

Q. There was a pretty heavy sea running when you were towing back?

A. No, there was no sea coming up to Port Angeles, and we had the sea along with us.

Q. But these squalls or blows come up in a very short time, they may blow up any hour?

A. Yes, they might, and blow pretty heavy, too.

Q. So the captain did not have any way of knowing but what a blow would come up any time and delay his getting to Port Townsend?

A. Oh, yes, it might have done that.

Q. Now, in a heavy blow, this Prosper would not have been able to make more than three or four miles an hour; that is, in a heavy blow?

A. No.

Re-Direct Examination.

Q. (Mr. Landon.) There having been a heavy sea a few hours before, was it liable that there should be another one soon?

A. No. When we turned around and we got in, we had the sea right behind us and it shoved us right along.

Q. In your experience there is practically no danger at all of there being a heavy sea between Port Angeles and Port Townsend?

MR. SHORTS: I object as leading.

A. No, not so far as I can say. But there are things that come up that I cannot say, that is more than I know.

Q. (Mr. Shorts). It might have blown up there within an hour and gotten very rough?

A. It did not look like it.

Q. I say it might have?

A. It might have done so probably.

(Testimony of witness closed.)

Hearing adjourned.

Seattle, Washington, October 23, 1913.

PRESENT:

Mr. Landon, for the Libelant.

Mr. Shorts, for the Claimant.

GUST FONDAHN, recalled, testified in rebuttal as follows:

Libelant's Rebuttal.

Q. (Mr. Landon.) You have heard the captain's testimony as to what took place at the doctor's office?

A. Yes, sir.

Q. What did take place there?

A. Dr. Taylor in the office was asked if he was a marine doctor and he said he was not. That is what he said, but he says I do work for the government boat Snohomish, but I am no marine doctor, that is the word he says. It was a small office, and the captain was standing alongside of him and the doctor and me together, the three of us. Another thing, I asked the

captain out at sea to take me to Port Townsend, it was at sea, not Port Angeles. I have a witness in the room to testify that, he heard the conversation.

Q. What was the captain's actions at the time he told the doctor in Port Angeles that he was off his hands—that you were off his hands and on to his?

A. The doctor took the permit and went up to the captain to read it in front of his face. He says, explain this piece of paper, that is the words the doctor said, and the captain says I cannot explain any more than the man is in your hands and is out of my hands, and the doctor took it for granted. The doctor has a witness to that.

Q. How did the captain act?

A. Well, he smiled; that is all he did.

(Witness excused from the stand.)

Seattle, Washington, March 30, 1915.

PRESENT:

Mr. Landon, for the Libelant.

Mr. Hulbert, for the Claimant.

DR. P. I. CARTER, a witness called on behalf of libelant, being duly sworn, testified as follows:

Q. (Mr. Landon.) Where do you reside?

A. Port Townsend, Washington.

Q. What is your connection with the marine hospital down there?

A. I am one of the surgeons in the Marine Hos-

pital service and am at the Marine Hospital at Port Townsend.

Q. How long have you been there?

A. At the Marine Hospital proper, offhand, about two years and a half, maybe three years; I am not sure.

Q. What did you do prior to that time?

A. I had other details there; a good deal of immigration service there, and then I was at the quarantine station, but that is the same service.

Q. In all, how long have you been in that service of the government?

A. In that service since 1907, in the fall, November.

Q. You are a practicing physician and surgeon, are you?

A. Yes; I also practice on the outside.

Q. What school?

A. I am from the Columbia University, Washington, D. C.

Q. Do you know Gust Fondahn, the libelant in this case?

A. Yes, sir, I do.

Q. When did you first become acquainted with his case?

A. I will have to refer to the hospital data. I cannot remember all the cases in the hospital. I saw him on the evening of January 11, 1913, the first time.

Q. About what time was this in the evening?

A. Late in the evening; I do not remember just the time; it was a late boat.

Q. January 11, 1913?

A. Yes, sir.

Q. You may go ahead and state what condition he was in at the time?

MR. HULBERT: Are you testifying from your memory?

A. I am testifying partly from memory and partly from the records of the hospital.

Q. You hold in your hands memoranda?

A. I have the hospital records.

Q. Who made the record?

A. I did in my own writing.

Q. And you are refreshing your memory from that?

A. Yes; we have so many cases there we have to.

Q. (Mr. Landon.) Go ahead.

A. The whole arm to the shoulder was badly swollen and painful. There was a two-inch sloughing, an infected point over the region of the fracture, that is the fracture of the forearm, both bones were out of position. They were very painful on manipulation or handling. That is the concise way of putting it. He also had injuries to his side and shoulder.

Q. What, if anything, did you find had been done? Was there anything on the arm or had there been?

A. He had an anterior and posterior splint completely over the arm.

Q. Did you treat him there under your control or supervision?

A. Yes, I did.

Q. Go ahead and relate what you did.

A. Well, the first thing was to remove the splints, of course, and examine the wound. I found it sloughing and infected around over the fractured area, the two bones, and it led down to the bone; a great deal of pus there. So I cleaned out the wound as good as we could, and applied a light splint to the arm, leaving an opening over the wound, which allowed us to dress the wound every day. I kept this up for some time. The records will show, I do not remember. And then, as soon as the wound was completely—before that we had a consultation as to the advisability of the form of treatment, what to do; and was advised to wait, on account of the infection until the wound had cleaned up entirely and had healed, which we did. Later on operated and plates were applied, regular surgical operation, but we found so much destruction to the periostium, the covering of the bone, the life of the bone, present, and also deterioration of the muscles, the bone having come through and broken the muscles; but the lack of this periostium caused the bones not to heal. In eight or nine days the external wound healed perfectly—from the operating wound. Afterwards, after quite a while, I do not remember how much time, the bones began to turn a little bit, showing that there was not life enough in the ends of the bone.

Q. I show you libelant's exhibit "A," for identification, and ask you if you have ever seen that before?

A. I have seen that picture—it looks to me like some

picture taken at Fort Worden; I have a duplicate of it in my pocket.

Q. Who sat for this picture?

A. Gust Fonadhn.

Q. When, about?

A. That was January 14th, at Fort Worden; 1913.

Q. What was the occasion of taking an X-ray picture? Was it taken at your direction?

A. Yes; our own X-ray was out of order.

Q. Who wished it taken?

A. I wished to see the condition of the bone, so as to know what to do.

Q. Will you detail the condition of the bone at the time?

A. I did before, in answer to your questions.

Q. After that picture was taken, what did you do?

A. Well, we had to wait until, as I say, we had a consultation of the doctors, and we waited, and decided to wait until the wound had cleaned up, until we saw it was free from infection and healed over; after which we operated and the plates were applied.

Q. You put plates in there?

A. Yes, two plates.

Q. Do you know about this picture, identification "B"?

A. I know that looks very much like it, evidently the picture of the arm at that time, though I do not remember seeing that before.

Q. You applied plates similar to those shown in exhibit "B"?

A. Yes, sir.

Q. What has been the result; what is the present condition, if you know, of his arm?

A. The present condition of the arm, as far as you can find—there is no union between the bone; there may be a little fibrous union between one of them, is all.

Q. I will ask you if there is likely to be any union?

Q. He will always have a poor arm as the result of it.

Q. Would he, in your opinion, be able to follow, for instance, longshoring or any work like that, or as seaman as he was?

A. I don't think so—no, sir, he would not.

Q. Doctor, you examined, or know the condition of his arm, some eight days or so after the examination—or nine days?

A. After which examination?

Q. After the injury?

A. The history gives the injury—

MR. HULBERT: I object—

A. (Continuing.) I will tell you. I saw him the first time on the night of the 11th of January. I have to refer to my data—it was at night.

Q. A man having such a wound as he had, what would you do, or what in your opinion would be the proper thing to do?

MR. HULBERT: I object to that as being incompetent and immaterial to the issues in this case.

Q. At the time of the injury?

A. I would have to judge it from the condition as it was when I found it and his admission of the history.

MR. HULBERT: I object to that further, on the ground that it is not shown that he was present and knew about the condition at the time of the injury or immediately thereafter; he is not competent to testify.

Q. You may answer, doctor.

A. Why, a compound fracture, both bones of the fore arm that could be several hours after the accident. Come down to several hours after the accident, as this case is supposed to have had, would be treated by the open method. That is to say a splint would have been applied, an extension on to the arm, as much as possible. First, if there was very much tenderness and pain, probably wait, just dress the wound and keep it clean and wait for about 48 hours, or until the swelling subsided enough so that you could use an extension, and apply splints of some sort of cast that would give you an extension on the forearm and hold the bones in an apparent right position, at the same time cutting an opening over the wound, to allow the wound to be cleaned and dressed every day without disturbing the splints on that daily dressing. You keep that up and then have an X-ray to be sure you had the bone in place. But you always have the window over the bone so that you could clean and keep clean. Dress it daily. That would be proper treatment, in

my opinion, up to the time the whole thing would heal over, the wound; and then you would keep the window closed and let it go until there should be union of the bones.

Q. I do not know whether you have explained sufficiently what you mean by casting?

A. Well, a plaster cast, splints of plaster paris, so that you would get an extension of the arm, on to the full fore arm, so that you would have the full extension back against the arme here (indicating just above the elbow) and out here, so that it would hold it out that way. (Showing.)

Q. Draw the bones—

A. Extend it so that the two bones would fairly approximate.

Q. Going back to the time that he arrived at Port Townsend, was his arm, or was it not, infected?

A. Yes, there was a good deal of infection, pus.

Q. Swollen?

A. Yes, the whole arm was still swollen, and we found that the wound was very much swollen.

Q. And the infection—what signs were pronounced, if any, of the infection?

A. Well, just the wound, just the sore, the pus coming out of it, and ragged edges of the tissue torn, that is all.

Cross-Examination.

Q. (Mr. Hulbert.) Doctor, you are stationed with the government at Port Townsend?

A. Yes, sir.

Q. There in the general Marine Service, for the government?

A. Yes.

Q. You are what we call a marine doctor?

A. Yes, though I do outside practice, too.

Q. Yes, I understand. Now, there are marine doctors stationed at various places, different ports over the country?

A. Yes, sir.

Q. Do you know anything about how many different places they have marine doctors here?

A. That would be a hard question—all the larger ports.

Q. All over the Sound. For instance, they have one here, one at Tacoma—

A. One at Tacoma; they have one at Bellingham.

Q. One at Everett?

A. I am not sure at Everett.

Q. But scattered around different places, so that when a man is injured aboard a ship, they can drop him off at a marine doctor some place where he can be cared for?

A. Yes.

Q. Now, you found, you say, when this libelant came to you, that he had splints on his arm. What kind of splints were they? Were they plaster of paris splints or wooden splints?

A. If I am not mistaken it was just anterior and posterior wooden or felt splints.

Q. Such as is commonly used?

A. For fractures of different kinds.

Q. And these splints were about such as you have stated that the arm should be put up in the first place?

A. I did not say what kind. But from the history of the case I think I would probably have had to wait for a given time for the swelling to subside.

Q. Before you put on any splints?

A. Then I would put on one that would give him extension and left the window open so that I could dress the wound.

Q. Of course the opinions of doctors differ somewhat?

A. Yes; they always do.

Q. What I want here, is not so much the opinion of one man, but what would be recognized possibly. In your profession you are an old school doctor, are you?

A. The regular school.

Q. I call the regular the old school.

A. Yes, sir.

Q. And this is true, is it not, that in a compound fracture such as this was, undoubtedly there is a great danger of infection?

A. In all open injuries there is a chance for infection.

Q. Would it not be especially true where there is a sailor working on board ship in his ordinary working clothes, and receives a compound fracture, where the bone breaks through the outer skin, naturally carrying

along with it the perspiration and other matter from his clothing, etc. Is not that true, and where it would take several hours to get him to a doctor, would not that be a case where there was exceptional danger of infection?

A. As I said, there is always a big chance for infection wherever there has been a wound.

Q. And the danger under these circumstances is great, and the doctor could do his best and do everything that he could do, according to his learning and teaching and training, and still infection might develop?

A. We have infection sometimes even in the operating room, where there is all precaution taken.

Q. There would be more danger, however, in a case of this kind, than where you have gone to the operating room and taken all the precautions?

A. That stands to reason.

Q. And this was a compound fracture, was it not, doctor?

A. Yes, a very bad one.

Q. Very bad compound fracture. Where both of the bones of the forearm were broken?

A. Yes.

Q. And punches through the muscles and soft tissue, clear out through the skin?

A. Well, apparently they were pressed out, the wound opening and leading down to the bone. That had been a bad fracture of both bones.

Q. And the wound was infected?

A. When I saw it, yes.

Q. You do not know how long it had been infected?

A. I could not tell only from the history of the case.

Q. Under these circumstances and the circumstances of this wound, or this injury, so far as you were able to determine, that the proper thing to do in the first instance would have been to put on splints?

A. In the first instance, I said if it was swollen too badly, too much injury there, it would be best to dress it for a day or two and let some of the swelling disappear, before you could handle it.

Q. Before you put anything on?

A. Yes, sir.

Q. Then you would put on splints?

A. I would put on, if I put on any splint, I would have put on an extension, to extend the bone and bring them together.

Q. But splints?

A. Yes, extension splint, that is what I would have put on.

Q. Then there would have been two purposes—

A. I would always have an opening to treat that wound.

— Q. There would be two purposes that you would have. One, you would put on splints so as to hold the bones in apposition as near as possible, and the other the extension weight to pull the bones so that the ends would come nearer together?

A. Well, that would all take place when any one put a plaster paris cast splint on.

Q. Or splints.

A. No. You could not get an ordinary anterior and posterior splint to act as an extension.

Q. You mean by extension the weight you put on?

A. No. By putting on a cast, put it on so by having some one hold the hand and extend it, pull it so that the bones got together and then apply the cast, using this part of the arm, resting here, to pull against one another, and then when it is all dry, the casting is all dry, you cut a window over that part.

Q. That is the way you would do it?

A. That is the way I would do it, yes.

Q. You say after it became infected, then the proper thing to do would be to wait until you cleaned up the infection?

A. I would have had an extension on there right along.

Q. But before you would undertake to put on—to cut down in there, and put the plates on the bone, you would have waited until the wound was clear of infection?

A. Oh, if we had it in good position by this extension the bones might have—

Q. Won't you please answer the question?

A. I did not understand you.

Q. I say, before you would cut down to put on

plates on the bone, you would wait until the wound healed and was clear of infection?

A. If they were still out of place I would have to wait.

Q. And as a matter of fact you did wait?

A. In this case, yes.

Q. Now the bones did not unite, I understand you to say?

A. No, sir; but they have a slight fibrous union.

Q. You have had a good deal of experience in broken bones?

A. I have had a fair amount. We have a great deal of it among sailors.

Q. Now, I understood you to say that there was so much damage to the periosteum, that is the skin over the bone?

A. That is the membrane that goes over all bones; that is where it feeds from.

Q. That is the periosteum.

A. Yes.

Q. There was so much damage to that—

A. There was a good deal of damage to it.

Q. On account of the severe injury?

A. It was evidently on account of the severe injury; the infection probably had a good deal to do with it.

Q. Infection had a great deal to do with it?

A. Yes.

Q. Now then, you think that that was the reason why, one reason why, the bones did not unite?

A. What was?

Q. Damage to the periosteum and the infection?

A. Both together, yes, sir.

Q. It is true, is it not, that you find occasionally a man or person who is injured, that it just seems impossible to get bones to unite?

A. Oh, we have very stubborn cases, yes.

Q. You often have stubborn cases?

A. Yes, sir.

Q. And you can take two different men, individuals, and treat them both exactly alike, and one of them his bones will unite all right and the other one will not, and you will have difficulty, in the same kind of injury?

A. Sometimes you will have some cases buck on you and you will not be able to.

Q. So that in every case it depends a good deal upon the physical condition of the individual, something that we hardly know about?

A. It generally depends altogether on that, but good physical condition helps a good deal.

Q. And do you not often find in an injury and accident where there has been a compound fracture of the bone of the arm or the leg, that the question of the result depends a great deal upon the individual and his individual physical condition, as well as upon the skill and the method of treatment?

A. It depends on the vitality a good deal; a good deal depends on that.

Q. And sometimes a man that fractures his arm or his leg especially a compound fracture and a doctor does everything in his power, and it is impossible for him to bring about good, perfect results, perfect union of the bones?

A. At times, in some cases they have had to have several operations.

Q. What further treatment do you think is now necessary to bring about a union of the bones in the arm?

A. That is a hard question to answer, because I do not know just to what extent—how much life there is in those bones now. I cannot tell.

Q. You cannot tell?

A. No.

Q. The wound has healed?

A. Yes; everything healed up in eight days.

Q. And it has been healed right along?

A. Yes, sir.

Q. Now, if there was any necrosis of the bone there, that would prevent healing; that would show from the outside pretty soon. would it not, that is there would be a breaking out, a running sore?

A. If there was any dead bone in there, it would be very apt to; yes, sir.

Q. Well, would you expect that if there was any dead bone in there at all, even from the small pieces or fragments, or necrosis, dead, dying bone, decaying of the bone, there would be an open, running sore there?

A. Most always there will be a discharge from them.

Q. Now, in case of that kind—in case of this kind, there are several ways of treating it, is there not? For instance, in cutting down and scraping the bones and bringing them in position again, and giving nature an opportunity to unite them? And, if there is fibrous tissue formed or cartilaginous tissue formed between the ends of the bones, that that should be broken up, by putting him under anesthetic and rubbing the bones together and give a new chance to heal the bones in that way? You know of these kind of cases?

A. Yes, but I do not think the last will apply at all to this.

Q. You do not think it will be?

A. Not the last one.

Q. Where there has been what we laymen call false union, soft tissue?

A. That will help with it, yes.

Q. I understood you to say that these bones adhered together?

A. One of them seems to have some fibrous union.

Q. Are they in perfect position now?

A. No, sir; not at the present time. One is at an angle, that is all. The other one is not.

Q. Now, then, you cut down finally and put on plates on to the bones?

A. I have done that once. That is the operation I did do. It did not hold.

Q. It did not work. You then had to cut down and take them off?

A. I have not taken them off yet.

Q. They are still on there?

A. Yes, sir.

Q. Have you ever cut down and tried to do anything since you first put on the plates?

A. Not tried to cut down, but I tried that manipulation that you speak of.

Q. You tried that?

A. Yes, sir.

Q. You have not cut down and scraped the bones and got them together?

A. No, sir; not yet.

Q. That is really the up-to-date method, where bones do not unite, is to cut down and scrape the ends of the bones?

A. Plate them.

Q. And wear them back, or plate them?

A. Yes.

Q. That has not been done?

A. No, sir; not the second time.

Q. When did you, if you remember, first cut down and put the bones together with the plates?

A. I think it was March 8th, 1913.

Q. I will call your attention to libelant's exhibit "B" for identification, and ask you if that is the way those plates were put on in March, 1913, as you have testified?

A. Yes, that looks very much like the bones, but the

bones were in a straight position at the time; they did not have that angle at the time.

Q. Straight position at the time?

A. Yes.

Q. At any rate, these plates that you put on at that time are still there?

A. Yes, sir.

Q. And no effort has been made since then to treat the bones, so far as cutting down?

A. Not so far as cutting down.

Q. And take off the plates or trying to get the bones to heal?

A. Only by that manipulation treatment after the bone was loose; tried that to irritate it, but it would not do.

Q. Do you know how old a man Mr. Fondahn is?

A. I gave his age at 47 on his admission to the hospital.

Q. Now how as his health?

A. He appeared to be apparently in excellent health.

Q. Well, if he is in excellent health, what are the chances in cutting down and fixing that arm?

A. The chances of cutting down—if he is to be operated on again he may have some union there between the bones, he may have.

Q. As a matter of fact, doctor, in the advanced stage of your profession, that is one of the well recognized methods of treating a non-union of bones, the cutting down and scraping the ends of the bones and bring

them back into apposition and hold them there until nature unites them?

A. That is one of the ways.

Q. That is now recognized?

A. That open method is recognized highly by the profession.

Q. The open method, such as I have stated?

A. Yes, sir.

Q. Have you ever done that yourself?

A. You mean applied plates?

Q. Have you ever had experience in cutting down and scraping the bones and putting the bones together, after they failed to unite?

A. Yes, I have.

Q. Ever been successful?

A. Why, yes.

Q. The profession generally views this as a successful way of treating bones when they refuse to unite in the first instance?

A. That is one of the processes.

Redirect Examination.

Q. (MR. LANDON) : Doctor, what in your opinion, is the condition of the ends of these bones?

A. Well, it looks to me like there might be a slight union, a fibrous, soft tissue union between the bones. That would give the faint light between the two. (Examining X-ray exhibit).

Q. The screws shown on exhibit B, is that the way they were put in?

A. They were put into the bone—the arm has kind of dropped on account of the drawing up of the muscles.

Q. And did the screw give way?

A. They have been pulled out there some and some bending of the plate, a little bending or springing of the plate.

Q. What about any bandages being on the arm at the time he came?

A. There was anterior and posterior splints, either felt or wooden splints. One on the anterior part of the forearm and one on the back part, and a bandage held them in place.

Q. Bandage of what?

A. Bandaged completely.

Q. When a wound becomes infected, such as that, what do you do?

A. The only way to do is to treat the wound until you get to the infection; clear all the pus out of the wound.

Q. Would that be the reason you would leave the opening there?

A. Yes, I would have to do it so that I could treat it under the splints.

(Witness excused.)

GUST FONDAHN, recalled, testified in his own behalf as follows:

Q. (MR. LANDON): I show you libelant's exhibit "B" for identification, and ask you what that is?

A. That is a picture taken of my arm seven weeks after the operation.

Q. After the operation performed by Dr. Carter?

A. Yes, sir.

Q. Where?

A. That was taken at Fort Worden.

Q. By whom?

A. By the government doctor. They have got the plates in the marine hospital now.

Q. And this identification "A?"

A. The reason why the doctor has not seen this one (B), the doctor went to Alaska three days before it was taken.

Cross-Examination.

Q. (MR. HULBERT): Now, referring to libelant's exhibit "B" for identification, you say that was taken seven weeks after the plates were put on by Dr. Carter?

A. Yes, sir.

Q. And where was that taken?

A. Fort Worden.

Q. How long was it after the operation was performed before you went to Fort Worden?

A. Seven weeks.

Q. (MR. LANDON): You went up there for the purpose of having the pictures taken?

A. Yes, sir, on the 27th of April.

MR. LANDON: I offer these identifications in evidence.

Photographs marked libelant's exhibits "A" and "B," respectively, filed and returned herewith.

(Witness excused.)

DR. P. I. CARTER; examination of, resumed:

Q. (MR. LANDON) : Why were these pictures taken at Fort Worden?

A. Our machine was not in working order then. We took him up there because they have an excellent machine.

Q. That is the nearest one to you?

A. It is right in town.

Q. Has Fondahn been up at your hospital all the time since his injury?

A. All the time I have been there; I was North a few months.

Q. You are there at the present time?

A. Yes.

Q. Fondahn still confined there?

A. Yes, sir.

Q. Has he been under your treatment?

A. He has been under the care of the hospital, different doctors when I was away. He has been there all the time since that.

Q. (MR. HULBERT) : Do you know whether it has been suggested to him by yourself or other doctors, that another operation be performed, such as you stated here, and which is a recognized operation in cases of this kind?

A. It has been suggested, yes.

Q. Why has it not been done?

A. Well, he has practically told after the operation that there would not be much hurry, or much doing, on account of it being better to let the arm get in as good condition as possible, and then try again.

Q. Who was he told that by?

A. Myself.

Q. You say now he is in proper physical condition. Do you know whether he is waiting until after this lawsuit is disposed of?

A. I do not know anything about that. I am just telling you that?

Q. But it has been suggested to undergo that operation for the purpose of getting these bones to unite?

A. To undergo some operation.

Q. Now this picture, exhibit "B," that was taken seven weeks after the operation, that shows some of the screws have been partially pulled out of the bone, and at least one of the plates is badly sprung or bent, does it not?

A. Yes, sir.

(Witness excused.)

GUST FONDAHN, examination of, resumed:

Q. (Mr. Landon) You are located at Port Townsend still?

A. Yes, sir.

Q. You have been there all the time?

A. I have been there all the time.

Q. You are all right but your arm? Your arm is the only thing that is the matter with you?

A. I have never been sick one day in my life. Everything healed up in eight days following the operation
(Witness excused.)

DR. P. I. CARTER, examination of, resumed:

Q. (Mr. Hulbert.) The witness Fondahn means after you cut down?

A. Yes, that is what he means.

Q. The condition of these screws on the plate there indicates that there has been considerable strain on that after that operation, does it not, doctor?

A. Either due to the destruction of the muscles during the accident——

Q. It shows there has been considerable strain there?

A. There has been contraction there of the ends.

Q. Bending the plate, tearing out the screws from the bone indicates there has been some strain?

A. It undoubtedly is contraction of the muscles or tissue where the destruction was, from the accident.

Q. There could be strain otherwise?

A. Yes.

Q. That is simply an expression of your opinion?

A. Yes, sir.

Q. But it indicates that there has been considerable strain there to cause these screws to be pulled out?

A. Yes, there is some contraction or strain there.

Q. (Mr. Landon.) Just examine Fondahn's arm at this time and tell us the condition.

A. Well, it is hard to tell without seeing it. If I remember right, one of the bones, I forget which one it is, is entirely away from opposition, is overlapped. The other seems to have some fibrous union.

Q. Now, doctor, look at the arm. You see the movement in there, don't you?

A. Yes.

Q. What is that movement, about?

A. Yes, at the side of the old fracture.

Q. How much movement?

A. Several degrees; impossible to tell how many.

Q. A couple of inches?

A. I do not think there is two inches movement there, but there is some movement.

Q. From his elbow to the end of his fingers there is several inches?

A. There is a drop down of ten or fifteen degrees from the right hand.

Q. Also the arm is bowed?

A. Yes.

Q. It is very plain that the bones are not grown together?

A. Yes, sir.

(Witness excused.)

GUST FONDAHN, examination of, resumed:

Q. (Mr. Landon.) You have considered another operation of this arm, have you?

A. Well, I am in the government hospital, that is not up to me.

Q. Did you consider having another operation?

A. Stand a chance of losing my arm. If I could go to the Rockeferror Institution and have Dr. Caryl put monkey bones in, graft them in, it can be done. But I may lose my arm.

Q. Your arm is of no practical use?

A. No.

MR. HULBERT: I object as leading.

MR. LANDON: I will withdraw that.

Q. How old are you?

A. I am close to forty-three now.

Q. At the time you were injured you were about forty-one?

A. Yes, just about the same time of year.

Q. You have performed no labor since your injury?

A. No, sir.

(Witness excused.)

DR. P. I. CARTER, examination of, resumed:

Q. (Mr. Hulbert.) Doctor, at Port Townsend, where this libellant has been, is the main marine hospital on the Sound?

A. Yes, sir.

Q. It is really headquarters?

A. Yes, sir, for the Puget Sound district.

Q. They are equipped there with surgeons and the necessary hospital facilities for any kind of operation?

A. Dr. Earle is in command of the service station at Port Townsend. He was there at the operation.

Q. He is the naval surgeon?

A. He is of the public health service, yes.

Q. You have there all the hospital facilities and equipment necessary to perform any sort of operation?

A. We have a fairly well supplied hospital, not everything, no. But very few have everything.

Q. But you have facilities there for taking care and performing operations on this arm known and recognized?

A. We have the facilities there for another bone operation, the kind done before.

Q. And that is a recognized operation for that?

A. That, and of course he spoke of monkey bones, the placing of new bones, bone chips in the arms, but we haven't got that stuff there.

Q. That can be obtained there the same as the doctors in Seattle can obtain them, or any place else?

A. We probably could get it, yes.

Q. In other words, where they used to use and do use yet, plates, some of the surgeons use bones?

A. Yes, and some use water.

(Witness excused.)

Hearing adjourned.

Seattle, Washington, Oct. 23, 1913.

PRESENT:

Mr. Landon, for the libelant.

Mr. Shorts, for the claimant.

(Testimony taken pursuant to stipulation on page 1 of this record.)

Claimant's Testimony.

CAPT. HARRY THOMPSON, a witness called on behalf of the claimants, being duly sworn, testified as follows:

Q. (Mr. Shorts). Your name is Captain Harry Thompson?

A. Yes, sir.

Q. How long have you been going to sea, captain?

A. Since 1883, thirty years.

Q. How long have you held master's papers?

A. Since 1895.

Q. And during that time you have been on sailing vessels most of the time?

A. Mostly always, yes.

Q. Sailing on what oceans?

A. On the Pacific.

Q. Particularly in the coastwise trade?

A. Mostly in the coastwise trade.

Q. You have made trips from Puget Sound ports to Southern California ports many times?

A. Lots of times.

Q. Now, in January of this year, you were master of the schooner C. S. Holmes?

A. Yes, sir.

Q. And at that time she was engaged in making a trip from San Francisco to Puget Sound and return?

A. Yes, sir.

Q. You had, as one of the members of your crew, Gust Fondahn?

A. Yes, sir.

Q. How long had he been with you, captain?

A. Oh, I believe since the 10th of May. He made several trips with me.

Q. Been with you from about the 10th of May, 1912, up until the time he was injured?

A. Yes, sir.

Q. Now, on the day in question, January 3d, 1913, your ship was in tow of a tug to tow her to sea?

A. Yes, sir.

Q. Where did you pick up the tug?

A. At Neah Bay.

Q. What was your cargo?

A. Piles and poles.

Q. Where were you bound for?

A. San Francisco.

MR. LANDON: I give notice now that at the proper time I will move to amend my libel to conform to the proof as to the condition of the weather, and that it was not such weather as was proper to take a vessel to sea in. Also for the thirty dollars paid for doctors' fees, and his wages for the round trip.

Q. Now captain, about how far were you off Cape

Flattery on the afternoon of January 3rd, 1913, when the tug signaled you to let go the hawser?

A. As near as I can judge, it was about ten miles or so.

Q. What time of the afternoon was it?

A. About six o'clock.

Q. Was it light or dark?

A. Dark.

Q. Did you see Fondahn get hit with the spring of the hawser as he was casting it off?

A. I did. I cautioned him to get out of the way.

MR. LANDON: I move to strike that part of the answer as to cautioning him to get out of the way, as not responsive to the question.

Q. What, if anything, did you say to him at the time he was casting off this hawser?

A. I told him to be careful and get out of the way after he cut the lashings loose, to get out of the way and run. He did run, but he was not quick enough.

Q. There was no difference in letting go this hawser in this case than in any other case where you let go a hawser?

MR. LANDON: I object as calling for a conclusion.

A. Naturally if you let go a hawser in smooth water or if you let it go at sea there is a difference, that is natural.

Q. There was a sea running at that time?

A. There was quite a sea, but not dangerous sea. They were all right.

Q. How far were you standing from him at the time he was injured?

A. About 12 feet.

Q. Where were the other members of the crew?

A. All of them were around there. Some were around there. I did not pay particular attention?

Q. Was there any one helping him cast off this hawser?

A. I believe there was some of them with him, but he was the last one to get away from there.

Q. Was it customary for the end of the hawser to swing around when you are casting it off?

A. It all depends on the weather.

Q. Well, in a sea of the kind that was running at that time?

A. That is the only way to let it go, when you want to get ready and let it go.

Q. Well, after he was struck with the hawser, what did you do then?

A. I went down, I was the first one down there to see how badly he was hurt.

Q. What did you do or say to him?

A. I asked how he was hurt and he said, my arm is broke, and we got him into his bunk. And after I examined the man to see how badly he was hurt I got up utterly useless to signal, and I put the vessel around on deck and the tug was so far out of sight it was and sailed back. We had a fair wind.

Q. Did you try to signal this tug that just cast you off to pick you up again?

A. There was no use trying because she was out of sight. I simply turned the vessel around and commenced sailing back.

Q. Why did you turn the vessel around and start back?

A. Because the man was injured. We had a fine fair wind going down the coast otherwise.

Q. Did you put back to get medical care for him?

A. Certainly. As soon as I got the vessel on the course, made the course to Cape Flattery, I went down to him and attended to him the best I could, bandaged him the best I could.

Q. What did you do?

A. Washed his arm and put splints on and bandaged it up.

Q. Did you do all you could for him at that time?

A. Certainly.

Q. Well, about what time was it now, by the time you got your vessel headed back on her course into the straits?

A. When I turned, you mean?

Q. Yes.

A. Well, it might have been half an hour after the accident happened; probably half an hour but no more?

Q. Did you make any effort to pick up a tow then?

A. Not there, there was no tow, but as soon as I got off Neah Bay I did. The same tug came out, the Goliah.

Q. The same tug came out from Neah Bay?

A. Yes, she got in ahead of us.

Q. What did you say to the tug?

A. The captain asked me what the trouble was and I told him one of the men got badly hurt and I wanted to get him to a doctor as soon as possible.

Q. Did you ask him to take you in?

A. I asked him to tow me up the Sound, but he said he had to wait for a vessel, but he would send the other tug out, but in the meantime to keep on sailing and the Prosper would come along and take us up.

Q. What tug was it took you out?

A. The Goliah, Captain Tom Nelson, of the Puget Sound Tow Boat Company.

Q. What did the captain say to you when you told him you had an injured man on board?

A. I asked him if there was a marine doctor in Port Angeles, and he said yes, certainly.

Q. You asked Captain Tom Nelson if there was a marine doctor in Port Angeles?

A. Yes, sir.

Q. What did he say?

A. He said certainly there is.

Q. Now, after you had your talk with the captain and he told you he could not take you on down the straits in tow because he had another tow to make, what did you do?

A. I told him to rush back to Neah Bay and send the other tug as soon as possible to pick us up.

Q. Did he do that?

A. He did.

Q. And in the meantime you kept on your course down the straits?

A. Yes, sir.

Q. How long after that was it before this other tug came up and picked you up?

A. Well, the ship's log book should show that. I believe it was somewhere about ten o'clock.

Q. Ten o'clock that same night?

A. Yes, somewhere about ten o'clock.

Q. What was the name of this other tug?

A. Prosper.

Q. Did you see the captain of the tug Prosper?

A. John Hogan. | I am not quite sure, but some such name as that.

Q. She belonged also to the Puget Sound Tow Boat Company?

A. Yes, sir.

Q. Now is Captain Tom Nelson of the Goliath and Captain Hogan of the Prosper, are they still in these waters so that we can locate them?

A. I guess they are both working for the Puget Sound Tow Boat Company.

Q. Now when the tug Prosper came out and picked you up, did you have any conversation with her captain?

A. I asked the captain also the same question, if he knew there was a marine doctor at Port Angeles, and he said the same.

Q. What did he say?

A. He said there is.

Q. Why did you ask him that question?

A. To make sure. I wanted to get the man in to the nearest doctor.

Q. Did his tug then pick you up?

A. He did.

Q. And took you in tow down the straits how far?

A. We were off Clallam Bay.

Q. How far down the straits did he tow you?

A. From there to Port Angeles.

Q. What time did you get into Port Angeles?

A. About between five and six o'clock in the morning. The ship's log will show that.

Q. And you dropped anchor then off Port Angeles?

A. In Port Angeles harbor.

Q. What became of the Tug Prosper then?

A. First he went over to the Snohomish, the life saving tug, she was in the harbor, and he notified them that we had an injured man aboard. After that he went in to the wharf and came straight back to the vessel. In the meantime a boat with an officer and sailors from the Snohomish came alongside, and that was about half an hour after we anchored. When they got alongside——

Q. Did you have any conversation with the officer of this boat from the Snohomish?

A. Yes, sir, I did, naturally.

Q. The Snohomish is a government life saving boat?

A. Yes, sir.

Q. What conversation did you have with the officer from this boat?

A. I asked him what he wanted, and he said I understand you have a sick man aboard and we were sent over here to take him ashore.

Q. What did you say?

A. I said that is all right, as soon as we got ready we would go along with them.

Q. Did you ask him if there was any marine doctor there?

A. I did, and he said there is a doctor here.

Q. Well, what did you do when the tug Prosper came up alongside again?

A. The Prosper came alongside, but we all agreed that it would be safer to put the man on the Prosper instead of taking him in the small boat, and the captain of the Prosper came alongside the ship and he and I went ashore on the tug.

Q. By "he" you mean Mr. Fondahn?

A. Yes, sir. And also the Snohomish boat came with us, towing behind the tug.

Q. Where did you land him in Port Angeles?

A. At the dock.

Q. What did you do as soon as you landed him?

A. As soon as we landed him, the officer of the Snohomish and I—he knew the doctor and I did not, and he and I went in and rang up the doctor; it was still early, just breaking day, and he got the doctor. I telephoned and told him to come down as soon as possible as

there was a sick man to be attended to, and he promised to come.

Q. Did you stay on the dock or go up to the doctor's office?

A. We went up to his office and waited for him.

Q. How far was it to his office from the dock?

A. Oh, about two city blocks.

Q. Who went up to the doctor's office?

A. Why, the officer from the Snohomish showed us the place.

Q. And Mr. Fondahn and yourself, the three of you?

A. Yes.

Q. Now what time did you get to the doctor's office do you think, captain?

A. It was probably about eight o'clock, as near as I can remember, between eight and nine. I did not take the time. I know we had to wait a little while before he came.

Q. How did you get up there?

A. Walked up there.

Q. All of you walked?

A. Yes.

Q. And was the doctor at his office when you got there?

A. No, I guess we met him on the street.

Q. On the way to the office?

A. Yes.

Q. And he turned around and walked back with you?

A. That is something that I really do not remember how it happened, where we did meet the doctor. I guess we did meet him on the street. I know the officer from the Snohomish introduced me to the doctor, but whether it was on the street or not I do not remember that. That is something I cannot swear to.

Q. Well, what did you say to the doctor?

A. When we got to his office we had quite a talk. I asked him if he was a marine doctor and he said yes, he handled the marine cases.

Q. What did you say about Mr. Fondahn being hurt there?

A. I told him that the man had his arm broke and I had tried to fix it up myself in the evening, but it was now about fourteen hours after the accident happened and needed attendance, and of course asked him if he was a marine doctor and he said yes. I had a hospital permit and wrote it out at his desk, and I asked him if he would accept that and he said yes.

Q. And did you turn the permit you made out over to this doctor?

A. Right there, right in his office.

Q. Did he seem to know what it was? Did he ask any questions about it?

A. I took it for granted that he knew what it was. He did not ask any questions about it at all. I advised him to communicate with the hospital people in Port Townsend regarding the man, because he could walk at the time, and he could go right aboard some steamer

for Port Townsend that same day if the doctor would say so.

Q. Now what, if anything, was said by him about pay for his services in taking care of the man?

A. There was not a word said about payment at all.

Q. He took the permit you made out?

A. He took the permit I made out, and I told him that the man is now in your care.

Q. What did he say?

A. He said that is all right.

Q. What did the doctor do with him then?

A. He took him to the hospital, he and his brother has a hospital there.

Q. At Port Angeles?

A. Yes; it is customary in small places, where there is no regular marine hospital, the government has a ward in a private hospital.

Q. They took him up to this private hospital, did they?

A. Yes, sir.

Q. Did you go up to the hospital yourself to see him?

A. I went out afterwards.

Q. What time, captain?

A. About twelve o'clock.

Q. The same day?

A. The same day.

Q. Did you see Fondahn there in the hospital?

A. Yes.

Q. What condition was he in when you saw him?

A. He seemed quite happy; he had his arm all fixed, lying in bed. I had quite a long talk with him.

Q. Did the doctor say anything to you about paying for his services in taking care of the injured seaman?

A. Not a word.

Q. How long did you stay at the hospital?

A. Oh, probably half an hour.

Q. Did you pay Mr. Fondahn for his wages?

A. I did, right there?

Q. Paid him off in full there, did you?

A. Yes, right there.

Q. Well then, what did you do?

A. Then I went back to attend to my business.

Q. Back to your ship and went to sea?

A. Went to sea the following day. I could not get a tow that day, I could not get a tug.

Q. Now I will ask you, captain, if this is your first experience of having men hurt aboard ship?

A. No, it is not the first. I have had lots of them?

Q. I will ask you if there are marine doctors in practically all of the ports on Puget Sound?

A. Well, there is only one marine hospital on Puget Sound, that is at Port Townsend, but there are doctors appointed as marine doctors to attend to marine patients. There is one right here in Seattle and there is in Tacoma. And I have had a case in Bellingham and in Tacoma both, where the same thing happened, where a private doctor acted as marine doctor, and he accepted

the hospital permit, and puts the patient in a private hospital in which the government supplies a ward.

Q. And keeps them there how long?

A. I really don't know what the time is. It used to be sixty days. It was reduced to thirty. Now I do not know what it is. They will keep a patient there longer if he is unable to move.

Q. Just what did they do with him?

A. Sent him to the marine hospital.

Q. Did you ever take any injured seaman of your crew on this vessel or any other vessel, to the marine doctor at Bellingham?

A. I did.

Q. Did you make out a permit just as you did in this case?

A. I did, sir.

Q. Did the doctor there accept it and treat him?

A. They did and that is all. I had a man with a broken leg up there one time.

Q. Have you done the same thing in any other ports?

A. Tacoma, and in San Pedro several times.

MR. LANDON: I object as not the best evidence.

Q. Was there ever any doubt in your mind but what this doctor, Taylor, that was his name, at Port Angeles, was a marine doctor?

MR. LANDON: I object as incompetent, irrelevant and immaterial.

A. There is no doubt at all. Of course the man told me so himself, and this man was listening to it and could hear. (Referring to libelant.)

Q. What inquiry had you made as to whether there was a marine doctor in Port Angeles?

A. From the two tug captains, and that officer from the Snohomish, they all told me the same thing. I took that as a good guaranty from the character of the men I asked. And I asked the doctor point blank whether he was a marine doctor and he said yes.

Q. Now, if he had told you that he was a private doctor, would you have made out the same certificate?

MR. LANDON: I renew my objection.

A. I might have made it out, but would he have accepted it?

Q. What would you have done with him if he had told you he was a private doctor?

A. I naturally would have had to offer to pay him or guarantee his payment for the sum. He would ask for a guaranty.

MR. LANDON: I object to this line of testimony as immaterial.

Q. Did Mr. Taylor at Port Angeles make any objection at all to accepting the patient and accepting the hospital permit?

A. None at all.

Q. Did he ask any questions about how he was to be paid?

A. He never did.

Q. What treatment Fondahn received after you left, of course you do not know?

A. No.

Q. Now, why did you put into Port Angeles instead of continuing down to Port Townsend?

A. I did that simply because it was 12 hours after the accident when we arrived at Port Angeles, and I knew the man's arm was in bad shape, and it was up to me to get him to the nearest doctor. If I had kept on and gone to Port Townsend we probably would have got there late in the afternoon, and it would have been so much further, so much longer time, and his arm was in bad condition without medical attendance.

Q. Did you believe that you could get proper treatment from the marine doctor at Port Angeles when you put in there?

A. I certainly did. The man being a regularly licensed doctor the man should get good treatment. Besides, the law says, I believe, that I should go to the nearest doctor.

Cross-Examination.

Q. (Mr. Landon). Now did the libelant ask you to go to Port Townsend when he was injured?

A. Not when he was injured; after we anchored at Port Angeles.

Q. Did he not ask you before that?

A. No.

Q. Did you make any remark at any time that it would cost you a hundred dollars more?

A. At the same time when he asked about going to Port Townsend, yes, I did. I said it would be an unnecessary expense to do it.

Q. As a matter of fact you could have got him to Port Townsend just as quick as you got him on the wharf anyway, could you not?

A. Well, if you know anything about the Sound, you would not ask that question.

Q. Now, let us see, it is twenty miles from Port Angeles to Port Townsend?

A. I am not sure.

Q. How many miles is it?

A. I would not say; I do not know.

Q. You do not know how many miles it is or how long it would take?

A. I know it would take at least six hours.

Q. Assuming that you got to Port Angeles at three o'clock in the morning?

A. We did not.

Q. I say, assuming that, then you could get to Port Townsend at nine o'clock the same day?

A. Might or might not, that would depend on the weather.

Q. What was the condition of the weather at the time you would have arrived at Port Townsend?

A. The weather was all right at the time we arrived at Port Angeles. But suppose I could not have been able to get there with a small tug, it would have been up against me for not going into the nearest port.

Q. You were not afraid of that?

A. Yes, I was, because that has happened before.

Q. What excuse have you to give for not going to Port Townsend?

A. I went to the nearest doctor.

Q. What was the excuse you gave at that time?

A. To go to the nearest doctor.

Q. What was the excuse you gave? You just testified that you told him it would cost a hundred dollars more?

A. That was a side issue, a side remark.

Q. It was a side issue?

A. It was at the time.

Q. You mentioned the side issue rather than the main one?

A. I did at the time, sure I did; I will admit that.

Q. The day before there had been a heavy gale out there when he was injured?

A. Yes, sir.

Q. And that had died down?

A. Not quite.

Q. Well, it was fair weather when you landed at Port Angeles?

A. Yes.

Q. No danger signals whatever about the weather?

A. No.

Q. How much did you give this libelant when you landed at Port Angeles?

A. When I paid him?

Q. Yes.

A. I do not remember. I guess he knows better than I do. It is on the articles. I do not remember.

Q. You heard his testimony that you paid him up to the day he was injured?

A. Paid him up to the time we arrived in Port Angeles, that is correct. The amount I do not remember.

Q. You remember distinctly, do you, of not having any controversy as to who would pay, nothing said about that?

A. Not one word when he accepted that permit.

Q. He accepted that permit?

A. Yes, sir.

Q. And you remember that you asked him if he was a marine doctor?

A. Yes, sir.

Q. And he told you he was?

A. Yes.

Q. And he said nothing at all about the permit that you were giving him?

A. No; he accepted the permit. I says, will you accept this and he says yes.

Q. What was that permit, allowing him to go where?

A. To a marine doctor.

Q. To a marine doctor, that permit was?

A. Yes. Any marine doctor will accept that permit.

Q. And after you had given him that permit you told him that he was off your hands and on his hands?

A. Yes.

Q. How did that question happen to come up?

A. I told him that when I left there.

Q. Why did you volunteer that statement, if you did volunteer it?

A. I do not remember the circumstances.

Q. Was not the doctor questioning the validity of the permit and you told him that he was off from your hands and on to his; now was not that the way it came up?

A. No.

Q. There was nothing said?

A. Not that I remember, no.

Q. You are interested in this vessel, are you, captain?

A. I was at the time.

Q. You still work for the company?

A. I do.

Q. Work for what company?

A. J. E. Billings.

Re-Direct Examination.

Q. (Mr. Shorts.) Now, captain, proctor for libelant seems to infer that the reason you put into Port Angeles instead of going to Port Townsend was that it would cost you a hundred dollars more to go to Port Townsend. I will ask if that was the reason?

A. It was not.

Q. What was the controlling reason that took you into Port Angeles instead of continuing to Townsend?

A. I told you. There have been several cases and Billings had to pay, that I know, where the captain did not put into the nearest port when a man is injured.

Consequently as I have told already, the nearest port—the nearest place I could get a doctor, and it was up to me to do so, and I was afraid in case I did go by Port Angeles and anything happened after that that we would have a damage suit.

Q. I will ask you if you did everything in your power to help and aid and care for the injured man as long as he was aboard ship?

A. I believe I did.

Q. And did you do everything that you could to provide him with medical care and attendance after you got him ashore?

MR. LANDON: I object as calling for a conclusion.

A. I did.

Q. You do not know anything about the circumstances of Mr. Fondahn leaving the hospital at Port Angeles?

A. Not at all. This is the first news I have had of it.

Q. You are no longer connected with this vessel in any way?

A. Not the C. S. Holmes; no.

Q. Have no interest in her?

A. No.

(Testimony of witness closed.)

CAPT. HARRY THOMPSON, recalled, testified as follows

(after examination of libelant in rebuttal):

Q. (Mr. Shorts.) You have just heard the libelant state what took place at Port Angeles as to what was stated to the doctor. Now is what he stated true?

A. As I remember no such thing happened. I asked him point blank if he was a marine doctor and he said yes, otherwise why should he accept that permit at all?

Q. Did he ask you to explain the permit to him in any way?

A. No, I do not remember him saying or asking any explanation of it, but I advised him to communicate with the hospital authorities in Port Townsend regarding the man. Of course at the time I thought all he needed was simple treatment right there, and he could go aboard the boat and go to Port Townsend the same day, but the doctor insisted on taking him to the hospital.

Q. Did the doctor say or do anything to lead you to believe that he did not fully understand what this marine hospital permit was?

A. No, I did not think so at the time and I do not think so now.

Q. Did you think at the time he fully understood it?

A. I did. Of course I have had so many cases in small places where there are marine doctors, they have acted in the same way, accepted the permit and took charge of the patient and then he is off the captain's hands.

Q. Was there anything unusual in your statement to the doctor that the injured sailor is now in his charge?

A. No, the same as I would say to any other marine doctor. I would say the same thing.

Q. Why did you say that to him?

A. I do not remember just the circumstances, but when I said good bye to him or something, I says now the man is in your charge and off my hands, and in your charge.

(Testimony of witness closed.)

Hearing adjourned.

Seattle, Washington, April 12, 1915.

PRESENT:

Mr. Landon, for the Libellant.

Mr. Hulbert, for the Claimant.

DR. W. J. TAYLOR, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Hulbert.) State your name in full, doctor?

A. W. J. Taylor.

Q. What is your business or profession?

A. Physician and surgeon.

Q. Are you a graduate of any medical school?

A. Yes, of Ontario, Canada.

Q. And are you licensed to practice in the State of Washington?

A. Yes, sir.

Q. How long have you practiced in the state of Washington?

A. Seven years this last January—six or seven.

Q. Have you taken any post graduate courses?

A. Yes. Took a post graduate course at the Poly-

clinic of Chicago, and also a post graduate course in the Rush Medical College.

Q. Where are you practicing now?

A. Port Angeles, Washington.

Q. How long have you practiced in Port Angeles?

A. Since I came out here; I took the State Board examination in January. That was either six or seven years ago—seven I am pretty positive.

Q. Are you practicing alone?

A. My brother is associated with me.

Q. Are you interested in a hospital there?

A. Yes, I own a hospital there.

Q. How long have you been conducting a hospital in connection with your practice?

A. When I came to Port Angeles first, there was a general hospital there, and I owned a half share of that; that is how I came to take a half share in that hospital. Then, afterwards, I built a hospital of my own.

Q. And you have been conducting your own hospital since that time in connection with your practice?

A. With my practice, yes.

Q. What is the nature of your practice; is it special or a general practice?

A. General practitioner; I do surgery and medicine both.

Q. What position do you occupy, if any, up there? Any county position?

A. I am county health officer; have been for two years.

Q. And about how many doctors are there at Port Angeles?

A. Eleven.

Q. In general practice, are they?

A. Yes, they all do general practice; none of them are specialists.

Q. How many hospitals are there there?

A. Two.

Q. One besides your own?

A. One besides my own.

Q. Are you the physician of any companies or railroads up there?

A. I am the appointed surgeon for the Milwaukee Railroad there. I received that appointment when the Milwaukee took over that railroad the first of January last. I am the Milwaukee surgeon under Dr. Bouffleur, of Seattle. I have a contract as doctor for the Port Crescent Shingle Mill Company; the Howell, Hill & Ray Shingle Mill; the Hanson, Ballard, Shingle and Sawmill and the Merrill Mill Company. Besides that, work; that is, my hospital has that, the county poor work; we have a contract for that. Also with the Erickson Construction Company while they are building roads there.

Q. You attend to all the surgical and medical work for the county and for these various companies?

A. Yes, sir.

Q. Including the railroad and besides your general practice?

A. And my general practice.

Q. Do you know Mr. Gust Fondahn, the libelant in this case?

A. I know of the man from having seen him January 4th, 1913. I met him first January 4th, I think it was.

Q. January 4th?

A. Yes, that I seen him first.

Q. Under what circumstances did you meet him and in what physical condition was he?

A. At the time I met him it was early in the morning, I think about five or six o'clock; it was dark at any rate. A policeman on the beat on the street called me up and told me that he wanted me and I went out with him, and just across the street at the corner I met two men coming along. One of the men in question was the man you speak of.

Q. Mr. Fondahn?

A. Fondahn. The other was the captain of the boat, the Holmes, I think you call her. And the policeman said here is the man you have been looking for. They told me Fondahn was hurt. I said, all right, we will go right up to the office. We went up to my office and found the man with a broken arm.

Q. Now, is your office in your hospital?

A. Oh, no. I have an office in town on Main street.

Q. Then what did you do with him, doctor?

A. Why, he stayed there in the office—if I remember rightly, he was bandaged up to some extent, when I looked at his arm, casual observation, I noticed that

he had a bad compound fracture, and he was suffering considerable pain and I managed, in the meantime, to get a fire lighted, it was quite cold, and I got the office warm and then I examined him, and told him he would have to have some care taken and that he would have to go to the hospital.

Q. Did you take him to the hospital?

A. Yes, as soon as I could get him there I sent him to the hospital.

Q. Now, what did you do at the hospital with him?

A. We took him there and I got my brother and nurse—the nurse was my brother's wife at that time, and I gave him an anesthetic, took off the bandage and his clothing connected with it, and washed all around the arm and seen the condition of it.

Q. What was the condition of it?

A. The condition proved to be a fracture of both bones of the forearm, a compound fracture; the skin was broken and the muscles were broken, the bones were sticking out.

Q. What was the condition of the muscles and soft tissue about the wound where the bones had protruded, as to whether or not they were damaged?

A. Well, they were all broken, severed and damaged very much; it was not a matter of how much cutting but how much damaged and bruised.

Q. Jammed?

A. I would not call it jammed; it was bruised and broken.

Q. What condition were the bones in, or did you see them then?

A. Both bones were sticking out, and it was a ragged break.

Q. How did the bones appear to be damaged, if you know, or did you make a close examination?

A. I do not catch your meaning.

Q. Well, was it a clean break?

A. I understand now. No, the breaking, if you take a break like that (indicating with a lead pencil), sometimes you would get a break, come down to ends, be concisive. In this the ends were broken and destroyed the covering of the bone, the periosteum was broken and torn along the ends both ways. It was about as bad a break as a person would want to see. I call it a very bad fracture. The periosteum was shattered and also the muscles; the periosteum, the covering of the bone, was broken and turned back.

Q. Now, let me ask you, what effect would that have on the union of the bones, do you think?

A. It would retard the union.

Q. Would make the union of the bones more difficult, would it?

A. Yes, sir.

Q. Now, how was he dressed when you first met him?

A. He had on rough, heavy clothing, rough, heavy shirt.

Q. Like the ordinary sailor?

A. Like the ordinary sailor would have. And the clothes were very dirty, and his arm was also very dirty. At the time we got him up there, there were bits of the shirt where the break was in the cut and in the wound.

Q. Fragments of the wool, you mean?

A. Yes, of the shirt and coat.

Q. Now, then, what did you do in the way of dressing and washing and the use of antiseptics or anything else for the wound? Just go ahead and explain.

A. Well, I do not know that it is necessary to tell you but I have had practice doing this kind of work almost all the time. We followed the general way of doing that, washed it thoroughly with antiseptic soap, got all the dirt and fragments out of the wound. We did that first, cleaned all the arm, removed all the clothing, all the shreds from it and got it good and clean. We took him to our surgery, our operating room, and we have an operating room equal to any in the State of Washington. We took him there, got him clean; applied iodine all in the wound; then I sewed up the muscles as best I could—adapted the bone the best I could, and got the wounds together and put on a dressing of splints, felt splints to hold it in place, and left it there, and it would have healed up if there had been a union; if not, then I would conclude something else had to be done.

Q. Was the arm badly swollen?

A. Yes, the arm was swollen.

Q. Was it painful?

A. Very painful.

Q. Now what did you do in the way of extensions, if anything?

A. There is a recognized splint that you put on for that. We put on splints that go to the elbow and hold it that way, just hold it with splints; I never heard of any one putting a weight on. We put on that kind of a splint.

Q. Were the splints you put on up against the big part of the arm?

A. Yes, sir.

Q. And then bandaged to the splint and that makes the extension?

A. Yes. Then, of course, if the arm got very painful this had to be taken down again.

Q. The arm swelled up badly?

A. Yes; very, very badly.

Q. Was there any infection?

A. We took all this down, loosened them, cut the bandage down, if I remember rightly, that would make a hole down to the wound, and we put adhesive to hold it on the outside; I think that was on Tuesday following the Saturday, or Wednesday, I am not sure of that. It looked as though it were infected by the temperature going up, and we took the whole thing down and it was infected. Of course it was not the fracture we had to deal with at that time—we had to deal with the fracture, but the fracture was secondary to the infection.

Q. Now what do you mean by that, doctor?

A. I mean that the fracture has to be dealt with to get it healed up, but that the infection which came there—it came, I do not know what the cause of it was, but that infection had to be eliminated before we could get the bone to heal.

Q. Then what did you proceed to do, so far as the infection was concerned?

A. Dressed and disinfected the parts filled with pus.

Q. How often did you dress and disinfect the wound—did you notice the infection on Wednesday, I think you said?

A. Well, think it would be not less than once a day.

Q. It would not be less than once a day?

A. No. Of course I will explain this; of course the flesh had all been bruised and it had lost its vitality and when once infection had started that had to slough, there was no vitality for that part of the arm, and it would slough and cause pus and infection.

Q. Now was it possible to reduce the fracture until you got rid of that infection?

A. Might reduce it but you could not get it to heal.

Q. What would be then a recognized method, in your profession, for treating that arm, from that time on?

A. To get it in as good a position as possible, get the bones in as good position as possible and treat the infection and get rid of the infection, apply dressings for that and also the swelling which was great.

Q. Then what treatment did you advise with reference to the treatment of the arm after that?

A. Well, this case, if you will understand, was given to me to be sent to the Marine Hospital, and the man understood that as soon as he was ready he was to go there and understood that I would not have the case there, but I told the man and wrote a letter also to the Marine Hospital authorities what I had done and that Lane splints or wiring, Lane splints applied or wiring have to be done.

Q. Either one of these methods you recognize in the practice?

A. Yes, sir.

Q. And he went from you to the hospital before the time arrived for your doing that?

A. Yes. The arm was badly infected and swollen, but his physical condition was so that he could walk to the boat; I am not sure whether I drove him down town or not, but he bought something at the dry goods store, possibly a shirt. I told him where to go. I wrapped his arm up, put the splints all over it merely as a matter of extra precautions; I put these splints and bandages on simply to keep it warm and protect it so that it could not move any until he got to Townsend. Then I wrote a letter to the doctor at Townsend advising him what I had done and what I thought ought to be done, that if he had been left in my care I would put on a Lane splint or wire the bone; that would be a matter of judgment, when the proper time would arrive to do it.

Q. Now, had the time yet arrived when you would get down to putting on splints or doing the wiring?

A. No, sir.

Q. Why not?

A. Because on account of the infection it would not heal.

Q. Did the swelling have anything to do with that?

A. Yes, the swelling would have to abate because you could not put on permanent bandage or plaster.

Q. What is the recognized method under these circumstances in your profession as to putting on a Lane plate or wiring during the time a wound is infected or swollen?

A. Not to do it.

Q. Was there any time while the patient was in your hands that the arm and wound was not too badly swollen?

A. There were times when it was worse, but even from the first day I saw him there was considerable swelling; even that morning of the 4th there was considerable swelling. It swelled after I first saw him, you understand.

Q. Then if I understand you rightly, doctor, you first put on splints for the purpose of extending the arm or bringing the ends of the bones together?

A. Yes, sir.

Q. Then, after the arm became so badly swollen and infected you had to take them down?

A. Infected and in pain, yes.

Q. Did he have any fever during this time?

A. Yes, he ran the temperature, after one or two days he had temperature.

Q. Indicating what?

A. The temperature would indicate infection.

Q. At your hospital did you have trained nurses there?

A. Yes, sir.

Q. Was this man in the hands of trained nurses when you were not there?

A. Yes, sir.

Q. And was that during all the time that he was there?

A. Yes, all the time.

Q. When did he leave your place?

A. He left on the 11th of January.

Q. He was at your place from the 4th until the morning of the 11th?

A. Yes, I think he had dinner with us on the 11th or his lunch and I took him to the boat, the boat left at one or two o'clock.

Q. He took the boat from Angeles to Townsend. How long did it take to make the run?

A. I forget which boat; we have different time cards.

Q. It would be about how many hours, do you think, ordinarily?

A. Probably three; it might have been more than three.

Q. Now, you say you bandaged the arm up when he started, when he left your hospital to go to Port Townsend?

A. Yes, sir.

Q. Was that a permanent bandage that you put on or temporary?

A. Absolutely temporary; I wrote the doctor to that effect.

Q. That was put on to protect his arm during the voyage?

A. To protect it from the cold weather that we had and to protect it from moving or displacement that would simply jar or make the contact worse.

Q. Have you ever had experience, doctor, in accidents occurring on boats?

A. Yes.

Q. Have you ever done any business for the government up there?

A. Yes; off the boat Snohomish, which is in the U. S. R. C., United States Coast Guard service, and for the Amalga, I have done emergency work for.

Q. That is cases where accidents occurred or severe sickness overtaken the United States marines or employees, that were closer to Port Angeles than they were to Port Townsend, where they needed emergency attention.

A. Yes, emergency attention. I have never handled any but just small cases where one or two calls or treatments where I kept them. Anything that was serious

or that required any extended treatment, I always send them on to Port Townsend as soon as it could be done. I had a case here this fall, a sailor of the Snohomish that had a broken arm; I set the arm, and the next day—it was not as bad a case as this—I set the arm and the next day he went to Townsend and stayed there while being treated. I did the emergency work.

Q. Now, doctor, when this man was brought to you, did the captain of the Holmes give you a permit to admit him to the Port Townsend hospital?

MR. LANDON: I object as leading.

Q. Well, I will ask you then, did the captain give you a paper of any kind?

A. When the captain came to me and brought him upstairs and asked me to fix him up, he said he was to be sent to the Marine Hospital as soon as he could go.

MR. LANDON: I object unless the witness explains that the paper was lost, for the paper would be the best evidence.

MR. HULBERT: We will get to that.

Q. What, if any, paper did the captain give you, doctor?

A. He gave me as custodian, for this sailor, a paper that was to admit him to the Marine Hospital.

Q. What did you do with that paper?

A. I put it in my desk, in a drawer I have there, and when the sailor left I gave it to him.

Q. That was Fondahn. When you say sailor, you mean Fondahn?

A. Yes, sir.

Q. You gave this paper to him?

A. I gave him the paper that he took with him.

Q. That is the one the captain gave you?

A. Yes, that the captain gave to me.

Q. Now, doctor, is it true that you asked the captain to explain to you what that paper meant?

A. Which, the permit?

Q. When the captain gave you this paper, this permit or whatever it was, did you ask the captain to explain that paper to you?

A. I did not ask him to explain, that is ridiculous to talk that way. I knew what the paper was. I did not need to ask any explanation.

Q. The reason I ask you the question is because Fondahn has already testified in the case and has stated that you asked the captain to explain the paper. Did you ever make such a statement?

A. No, sir. The paper was a permit to the hospital at Townsend. I knew what the paper was.

Q. Had you ever had any of them before?

A. I have seen them before, yes. Sailors have to have them when they go from the office.

Q. Now, Mr. Fondahn further states in his testimony that when you asked for an explanation, you said the captain said he had nothing to explain, this man is in your hands now and out of mine. Was any such statement made with reference to the explanation of the paper?

A. No, I do not think there was anything of that kind.

Q. Was there any time, doctor, that you refused or neglected to give this man treatment?

A. No, sir.

Q. Was there any time while he was there that you insisted upon him getting out and going away from your place?

A. No, sir; there was no time. He could stay as long as he liked, but I told him that he was to go to the Marine Hospital as soon as he was able to go he should go there, because that was the place provided for him; that that was his permanent place, this was only temporary arrangement—mine was just temporary.

Q. Now, when the captain came to you, I will ask you whether or not he asked you if you did marine work or not?

A. There was something to that effect. He asked me if I was a marine doctor. When I told him no, that I had done emergency marine service. He asked me if I was a marine doctor and I said no, because I am not.

Q. Now what did you tell him then—I understand that you told him you did emergency marine work?

A. That I had done before this time and have done it since, but emergency marine work.

MR. LANDON: I do not know that I am just right in this, but I think counsel is leading the witness as to what to say.

MR. HULBERT: I do not mean to, I simply repeated what I think the doctor said.

Q. Was there any other conversation about your work, or about pay, or anything else at the time?

A. I do not recollect anything else further, at all.

Q. The man was there, injured?

A. If I may explain to the Court, this was in the morning, six o'clock; there was a man sitting in my office; he was suffering awful pain; the man got up and walked and then had to lie down. I gave him something to ease his pain—morphine; the man was in very great pain; I had to get him relieved as quick as I could, and there was no bartering there.

Q. Was there any discussion about fees?

A. No; I was not in a position, having a man suffering, I was going to do that emergency work while I could. I have these cases frequently from ships and from the woods there and I never stop, I cannot stop to barter with a man about the pay. This man, you understand, had a very severe case, he was in a bad way.

Q. Did you, in treating this man, doctor, did you follow the teachings of your school in taking care of his arm?

A. Yes, sir, the teachings of the school, and further followed Scudder.

Q. Who is he?

A. He is recognized as the American authority on fractures.

MR. LANDON: I object to this as incompetent. I object to the answer of the witness that he follows some school and some doctor.

Q. Who is Scudder?

A. He is an American authority on fractures.

Q. He belongs to the same school that you do?

A. The regular school, yes.

Q. Now, what do you mean by following the teaching of your school and also Scudder?

A. Well, I was taught when I was at my medical college—

MR. LANDON: I object to the witness testifying as to following some school. I submit it is only competent to tell what he has done in the matter, when he did do.

Q. You may answer, doctor; go ahead.

A. That there are certain recognized courses of treatment of cases, and I had followed what I had seen done at my school, and what I had seen at the Polyclinic and the Mercy Hospital under Doctor Murphy.

Q. When you speak of Murphy, is that J. B. Murphy?

A. Yes, sir.

Q. What is he?

A. I take him to be the best surgeon in America.

Q. Have you had experience with him?

A. I have attended his clinics, seen him operate and heard him lecture.

Q. That was where you took one of your post graduate courses?

A. Yes, at the Mercy Hospital; I have been there frequently.

Cross-Examination.

Q. (Mr. Landon.) Now, doctor, when was the first time any one said anything to you about your being paid for your services?

A. I don't know that anybody did say anything about paying for my services.

Q. Not at all?

A. No, sir. The first reference to pay, if you wish me to tell you that, was when Fondahn was leaving; he left on Saturday. Fondahn had with him a hundred and some dollars which I deposited in the bank, and I told Fondahn that the way I did with these cases off emergency ships, not off government ships, that the captain or the man himself had always paid me, and I gave him a receipt so that he could collect it from the company or wherever he could.

Q. Nothing else said either way about it?

A. And he had the money with him, and if he would do that it would save me a lot of trouble, and he would be closer to the people than I would, and there was not a word about it and he agreed to it.

Q. The captain did not say anything about pay, at all?

A. No, sir.

Q. He gave you a permit that you knew was only good at Port Townsend?

A. He did not give me a permit as directed to me. He gave me a permit to give to Fondahn to admit him at Port Townsend hospital. That permit had absolutely nothing to do with me.

Q. He made no arrangements with you about pay for your services?

A. No, sir.

Q. The captain made no arrangements whatever?

A. Nothing whatever. The captain could not have been there at the end of the service, and as I told the man he could pay me or I would get it from the company afterwards.

Q. Now, you are as sure of that as anything else that you have testified to. You remember that the captain did not make any arrangements about pay at all.

A. Made no arrangement.

Q. The captain stayed there until when?

A. I would not be positive when the captain left; I saw him the next day a couple of times.

Q. Nothing said then at all?

A. Nothing said at all.

Q. Nothing whatever. Did you attempt to set this man's arm?

A. Attempt to set it?

Q. Yes.

A. What do you mean by attempt to set it?

Q. Did you set it?

A. I gave the man an anesthetic, put his arm in place and sewed up the muscles and put on temporary splints and told him when he came out from the anesthetic that if it healed up, all right, if not, he would have to have a Lane splint or wires applied.

Q. Did you consider that was sufficient setting of the arm?

A. I say absolutely it was. If it healed up without an infection it might have come out all right. I could

not tell beyond that. I could not say anything, nor could any man say in a case of that kind what would happen.

Q. You examined it?

A. Yes, sir.

Q. Did you notice the condition of the bone?

A. Yes, sir.

Q. Will you examine exhibit "A"?

A. Yes, I have examined that; I have not seen this before.

Q. Now, after examining that exhibit, would you say that that was a proper setting?

A. That man left me; he went to Townsend. I do not know when this picture was taken or what had happened before it was taken. Of course this is not a proper setting; it could not be. But before the swelling and sloughing out was finished, you could not set it in position.

Q. Now, doctor, when you got this man at seven o'clock, the swelling was not very severe?

A. There was considerable swelling at that time.

Q. The swelling came on afterwards, didn't it?

A. More swelling came on than at first.

Q. Now, did you take care of this case particularly yourself?

A. Did I take care of it?

Q. Yes.

A. I did take care of it; I seen the man every day.

Q. Is it not a fact that your brother and others attended to the case?

A. No, my brother attended it with me; helped me to attend to it.

Q. You stated what was done there, all that was done?

A. How do you mean stated?

Q. To the arm, during the time he was there?

A. The bandages we used?

Q. You stated what was done, everything that was done?

A. Well, if the bandages became too tight when I was not there, he might have loosened them, because of the swelling coming on.

Q. You only attended to taking care of this man temporarily?

A. I only intended to take care of him temporarily.

Q. Only intended to take care of him temporarily?

A. I just intended to give temporary treatment until he got to Townsend.

Q. They simply put him off there to get rid of him—from the boat?

MR. HULBERT: I object as calling for a conclusion.

Q. Is not that your opinion, doctor?

MR. HULBERT: I object as incompetent, immaterial and calling for a conclusion of the witness and conclusion of counsel.

MR. LANDON: The doctor has testified to a good many conclusions and conjectures.

Q. Is not that a fact that he put him ashore to get rid of him?

A. Well, I do not know that to be a fact.

Q. From the actions of the captain?

A. They took him off to get him taken care of and I suppose get rid of him, as far as that is concerned, but he made arrangements where he would have his permanent care and where he should have it.

Q. You told me that you knew well enough that they had put him off there to get rid of him?

MR. HULBERT: I object as incompetent and immaterial and not cross-examination.

MR. LANDON: I think I have a right to show what the demeanor of the captain was.

MR. HULBERT: He has already told you what he put him off there for.

Q. Have you got a memorandum as to how you attended this man? Do you keep books?

A. Yes, sir.

Q. Have you that book?

A. Possibly there will be a chart for it.

Q. Would that be in your handwriting?

A. Oh, no.

Q. Now, doctor, is it not a fact that you had some controversy with the captain?

A. No, sir, I had no controversy with the captain at all.

Q. Regarding the treatment? That you conferred with the hospital and found out, you or your brother

found out, that the permit was not good for your pay, and that you and your brother asked him to leave as soon as possible?

A. My brother had no authority to ask him; I own that hospital; my brother is only an attendant with me; I do not think he ever did. It was my case. I was responsible for it. I absolutely know he did not tell him anything of the kind. I had told him, as soon as you are ready you must go to Port Townsend, as soon as you feel you can go.

Q. Now this is what Fondahn testified to: "The captain took me up to Dr. Taylor—" Have you read this testimony?

A. No, I have not.

Q. "Taylor brothers. That I found out it was not a marine hospital. The captain wrote out a permit for me. This permit is only good to get me accepted at the marine hospital at Port Townsend. The captain says, here is a paper, doctor, to send to the Marine Hospital, and you will have to do it for him and they will square all your expenses." Now, doctor, don't you remember such a conversation?

A. No, sir; I remember him giving me a permit for Fondahn to admit him to the Marine Hospital. And, as Fondahn was not able to take care of himself, you can easily see or imagine from what I tell you, the man—

Q. I did not ask you about the condition of the man at that time; I ask you what took place between you and the captain?

A. I am trying to tell you.

Q. Well, proceed. How do you answer it, doctor?

A. I have answered it.

Q. Nothing said whatever?

A. Nothing said whatever.

Q. You did not ask the captain to explain this piece of paper?

A. No, sir, I do not think I asked him to explain it; I knew what it was.

Q. You did not ask him anything about it at all?

A. Nothing in the way of explanation. I might ask what boat he was on, something about his service, or who they were or what company they were, but to explain that paper, I did not need an explanation what that paper was.

Q. "The captain told him, I have nothing to explain, this man is in your care now, he is out of my hands." Was there anything like that said?

A. Not that I recollect.

Q. Now you would remember?

A. I would hear and recollect, if it took place.

Q. Sure?

A. Certainly.

Q. Now, then, further he testified, "The doctor came in in the morning, piled my clothes there and wanted to know if I could get up now." Do you remember about that?

A. No, sir. I never did anything like that. I did not do that.

Q. You do not know whether your brother did?

A. Well, I do not know that he did or did not. I am pretty positive he did not because he would not do that kind of thing. He had to ask me what he would do.

Q. Now, what did you say the captain asked you—if you were a marine doctor, did he?

A. He asked me if I was a marine doctor. I told him I was not. That I had done marine emergency work.

Q. What do you mean by that?

A. When there was a case happened, a case that might happen on the Snohomish, where a seaman was hurt they are supposed to send them to Townsend. But the law allows them to make out a statement that they could get me before they could get the marine doctor, if the case was absolutely necessary for them to get a doctor. And this case of Fondahn's, I saw it needed emergency treatment.

Q. It needed also permanent treatment?

A. Yes, it certainly did.

Q. Now, doctor, what led you to believe that they were trying to get rid of him?

MR. HULBERT: I object as incompetent and immaterial. Counsel is assuming that the testimony shows that such a condition existed.

MR. LANDON: Well, I want to show by this witness that he has made a statement that the captain put him off there to get rid of him, and I want to know his reasons.

MR. HULBERT: There is nothing to show that.

Q. I want to know.

(Previous question read to witness.)

A. I cannot recollect anything that led me to think that.

Q. Doctor, at Port Townsend some two weeks ago, when I called on you, did you not state, in effect, while you thought that we were trying to prove you incompetent, that you knew that they were putting him off there to get rid of him, or words to that effect?

A. I will not say that I did.

Q. Now, doctor, you would not say you did not?

A. I would not say that I made any statement to that effect.

Q. Now as a matter of fact that is what they were doing?

A. I do not know anything at all about it.

Q. You only pretended to treat him temporarily, to give him temporary treatment?

A. Temporary treatment until he was able to go to Port Townsend. But you will understand that that treatment would be the same as if I was going to treat him permanently.

Q. Would you, after examining exhibit "A", say that is the way you would treat him permanently?

A. If I knew the condition of the arm—of course you must understand that the man had gone to Townsend. The arm as shown in the picture I will swear I did not leave the bone that way. I will swear to that that

I never left that bone in that condition. You can never tell me that I would leave that that way. You understand that man had been brought over to Port Townsend from me.

Q. You do not think any good doctor would leave a bone like that?

A. Certainly not.

Q. If that bone was in that condition it had not been properly treated, had it, doctor—if it was in that condition?

A. I want you to understand that bone was not like that when it left me. The treatment would be to put it in place.

Q. What was the condition of the bone when it left you?

A. A compound fracture, but as far as we could get these bones placed together.

Q. And was it in place?

A. When it left me?

Q. Yes.

A. I would not say it was in perfect place.

Q. It was not like that (exhibit "A")?

A. No, sir.

Q. You would say it had not been good treatment if it was that way?

A. No, it could not have been good treatment. He left me with bandages on the arm. We splinted it up as much as we could to protect it while he was going to Townsend. He walked down to get on the boat.

Q. Was it unsafe to move him at that time?

A. No. If it was I would have kept him there. He was able to walk, you see.

Q. Now, you accepted thirty dollars from him at that time?

A. Yes, I gave him a receipt for it.

Q. What was said?

A. I told him what the charges of the case would be, that that was as little as I could make it, thirty dollars, and if he would pay me the thirty dollars I would give him a receipt for it and he could collect it probably much easier than I could and quicker. To which he made no objection whatever. He says I will pay you and take a receipt, and put the receipt in on the case. I did not know what he meant—probably that the company would pay it.

Re-Direct Examination.

Q. (Mr. Hulbert.) You have told counsel that you were treating the patient temporarily, as you expected him to go to Port Townsend?

A. Yes, sir.

Q. Was that treatment any different in any degree or any particular from the treatment that you would have given the man if he was going to stay with you right there?

A. Absolutely not.

Q. Now, after infection got in there, and that, I understood you to say, occurred on Wednesday—

A. I think it was on Wednesday.

Q. Then, if the bones were not in perfect apposition, would it not be necessary to clean up the infection before you could get down and do anything in the way of wiring?

MR. LANDON: I object to counsel leading the witness.

A. It would be necessary then, where the arm became infected to get rid of the infection. In fact, in the meantime that was the whole thing to do, to get rid of the infection that we had in the arm, because the bone would not heal.

Q. Then, if the bones were not in perfect apposition, was there anything you could do with the bones until you could clear the wound of infection?

A. We could put on wires or Lane splints—

Q. Before you cleaned up the infection?

A. No, sir. If I may explain that—

Q. Certainly.

A. We could not put on wire or Lane splints with the surrounding tissues infected. You would have to bore a hole in the bone, and after that the infection would be apt to get in the bone, and you would have a bigger and wider field for that infection.

Q. And if you got infection in the bone, that would probably be followed with necrosis or some disease of the bone?

A. If that bone became infected he might lose the arm.

Q. One more question. Whatever might have been the circumstances of a man coming there, or whatever

may have been said at the time that he was left with you, or whether or not arrangements were made regarding your fees, did that make any difference with your treatment of this man?

MR. LANDON: I object as calling for a conclusion and leading.

A. No, sir. Whether I were paid or not, my treatment would be the same. Because, if you will let me explain further, you get emergency cases and you do not know whether you will ever get paid. Whether from the boats or street or woods, we treat them all the same, the best treatment.

Q. Now, was there anything omitted in the treatment of this man that you would have given him if there had been any different arrangements made at the time that he was left there?

A. No, sir.

A. No, sir.

MR. LANDON: I object as leading and improper and calling for a conclusion of the witness.

Q. You stated in answer to counsel's question, that you knew and that Mr. Fondahn knew, that as soon as he was able we would go to Port Townsend?

A. Yes, sir.

MR. LANDON: I object to that as leading.

Q. Now, did the fact that you knew that he was going to the Marine Hospital, and that Mr. Fondahn knew that we was going there as soon as he was able, affect your treatment of the man in any way?

A. No, sir.

Q. (Mr. Landon.) Do you do a great deal of work for nothing?

A. I certainly do some that I cannot collect for.

Q. That you don't intend to collect for; that you don't intend to get pay for?

A. No. Excepting the contract that I have with the county. There are people in Port Angeles that I will do work for and I know I will not get paid for it.

Q. Strangers?

A. Do I do that work? For strangers?

Q. Yes.

A. Well, I hope I will get paid. I usually try to collect my money.

Q. Now, if a man gets in your hospital and you find out that you are not going to be paid, as Mr. Fondahn testified in this case, what do you do then?

A. When I find out I am not going to get paid?

Q. Would you give him the same treatment then?

A. Certainly I would.

Q. You would go ahead and give him the same treatment?

A. Go ahead and give him the best treatment possible.

Q. Even though he could go to Port Townsend and get it there.

A. Even though he could go there; that would be up to the man and me to get him there as soon as we could.

Q. That is what you done in this case?

A. As soon as he was able to go, he went as soon as he was able to go to Port Townsend.

Q. Who suggested that?

A. That he go to Port Townsend? That I could not tell you. I asked more than once, I said, as soon as you are able to go to Port Townsend, you are to go.

(Testimony of witness closed.)

Further hearing adjourned. To be resumed by agreement.

Seattle, Washington, April 22, 1915.

PRESENT:

Mr. Landon, for the Libelant.

Mr. Hulbert, for the Claimant.

DR. WILLIAM H. TAYLOR, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Hulbert.) What is your business, doctor?

A. Physician and surgeon.

Q. How long have you practiced your profession in the state of Washington?

A. Five years.

Q. Have you been admitted or licensed to practice in this state?

Yes, sir.

Q. Are you graduated from any medical college or school?

A. Yes.

Q. What college?

A. London, Ontario, Canada.

Q. When did you graduate from that school?

A. 1910.

Q. Where have you practiced since that time?

A. I served internship at Tacoma; been one year at Blaine, Washington, and the rest of the time at Port Angeles.

Q. Have you taken a post graduate course yet?

A. No, sir.

Q. Where are you practicing now?

A. Port Angeles.

Q. How long have you been practicing there?

A. Three years.

Q. Are you a brother of W. J. Taylor, who has already testified in this case?

A. Yes, sir.

Q. Are you associated with him at Port Angeles?

A. Yes, sir.

Q. And since you have been there, have you been actively engaged all the time in the general practice of medicine and surgery?

A. Yes, sir.

Q. What connection has your brother, or yourself, with a hospital in Port Angeles?

A. My brother owns a hospital in Port Angeles.

Q. What is the name of that hospital?

A. The Olympic.

Q. Is your hospital equipped to take care of any kind of surgical cases or sickness?

A. Fully equipped for either medical or surgical cases.

Q. Have you operating room?

A. Yes, fully equipped operating room.

Q. Do you know, Mr. Fondahn, the libelant in this case?

A. Yes, sir.

Q. Now, when was the first time you ever saw him?

A. I do not remember the exact date; it was January, 1913.

Q. And where did you first see him?

A. At the hospital.

Q. What condition was he in at that time?

A. He was brought in with a compound fracture—I do not remember which arm it was?

Q. The right arm?

A. It was a compound fracture of the arm below the elbow. He was suffering from shock at that time.

Q. Now, what was done with him at the hospital?

A. He was taken to the surgery and given an anesthetic. There was a splint and dressings, if I remember right, and that was taken off and revealed a wound of the forearm, a circular wound, about one and a half or two inches in diameter, through which both bones were protruding, and it showed a very ragged wound, the muscles were torn and the periosteum torn back from the bones, a very ugly looking wound. The arm was washed with antiseptic soap and solutions, and the pieces of cloth and one thing or other that had worked into the wound were picked out and the wound bathed with iodine; the bones put back in position and dressings applied, splints applied and put back to bed.

Q. Now, what was the nature of the splints applied?

A. The usual splints, both kinds, anterior—what we call an angular splint, it comes down this way, from the upper part of the arm and comes down here, and is tied up here and gives a pull, an extension to the arm.

Q. Do you know whether there was an particular name for that method?

A. It is just called anterior right-angular splints.

Q. In use by the profession?

A. In use by the profession for that kind of injury.

Q. You put the bones in proper position, did you?

A. Yes, the wound was open and they were put back in proper place, you could see them.

Q. And then, what, if anything, was done? Was there anything done with the muscles?

A. The muscles were torn and were all sewed up and the membranes.

Q. Did they make a covering over the bone?

A. Yes, sir.

Q. And then you say he was put back to bed?

A. Yes, sir.

Q. What care did he have when you put him to bed, what attention or care did he have after that time?

A. Well, he had the usual care passing the anesthetic, a nurse had to stay with him two or three hours, until he came out from the anesthetic, to see that he kept the arm still and see that he was all right. After that he was visited once or twice a day.

Q. By the doctor?

A. Yes, sir.

Q. How were you equipped there as far as nurses were concerned to take proper care of patients?

A. Trained nurses.

Q. Were there trained nurses around Fondahn during his stay in the hospital?

A. All the time, yes, sir.

Q. Did any infection set up after that in this wound?

A. Yes, sir.

Q. Can you tell just how long that was?

A. I do not remember definitely, no. I remember it was two or three days after that his temperature went up, which would indicate an infection.

Q. Then what was done, if you know?

A. Why, the splints were taken down and the wound cleaned up, sterile dressing applied twice a day, if I remember.

Q. Sterile dressing applied to the wound?

A. Yes, sir.

Q. Applied to the wound twice a day?

A. Yes, sir.

Q. Did you assist in doing that work, doctor?

A. Yes.

Q. Who else was present, if you remember, when he was dressed and taken care of that way?

A. Mrs. Taylor, my wife, and Miss Peterson, I think was the other nurse.

Q. Do you remember the date that Mr. Fondahn

went from your place, from the Olympic Hospital at Port Angeles, to Port Townsend?

A. No, sir. I think it was about six days. I am not sure.

Q. Now, just what were you doing to get rid of the infection after it developed?

A. Washed out the pus with antiseptic solutions, then put back on the sterile dressings, hospital dressings.

Q. Was the arm swollen?

A. Yes, very badly swollen.

Q. What was the condition of it when you first saw it, as to whether it was swollen or not?

A. It was swollen at that time.

Q. Now, what was the essentially important thing to do after infection was discovered in the wound?

A. To take care of the infection.

Q. What was the most important thing to look after then?

A. To get rid of the infection.

Q. I think you stated, doctor, the condition that the bone was in and the muscles about the wound and about the bone. I would like to have you explain a little further and more particularly about that. Was it a clear, clean break, where the bones stuck out through the flesh, or was it a bruise?

A. No, sir, it was a very ragged break, more kind of a jammed appearance, the edges were.

Q. Did they have the appearance of being broken the same as if you would take a pencil and break it, or did it have the appearance of being struck with something?

A. Had the appearance of having been struck.

Q. Would that make any difference in the probabilities of perfect union of the bones?

A. Yes, a clear cut break will heal up much quicker than a jagged break.

Q. What was there that would ordinarily prevent or interfere with the union of the bones?

A. The periosteum, that is the lining on top of the bone, was torn back, and left the bare end of the bone.

Q. After the infection got in there, what do you think, doctor, in your judgment, was necessary to get a union of the bones?

A. It was absolutely necessary to clear up the infection first.

Q. Then what do you think would have been the next?

A. Well, have to have some operative treatment, wiring of plating, something like that.

Q. Who had charge of this case there, really had charge of it, during the time he was in the hospital?

A. My brother, Dr. W. J. Taylor.

Q. Whatever you did, you did as assistant?

A. Yes, sir.

Q. Did Mr. Fondahn leave the hospital before the infection was cleared up?

A. No, the infection was still on when he left, I think.

Q. Were you present at all when the captain and your brother, W. J. Taylor, first met with reference to Mr. Fondahn's treatment?

A. No, sir.

Q. You did not hear anything said then about the permit?

A. No, sir.

Q. Or about fees or anything of that kind?

A. No, sir.

Q. Were you present when Mr. Fondahn made any payment to your brother?

A. No, sir.

Q. Now, doctor, you have related the character of treatment that was given in this case. I will ask you whether or not that is the kind of treatment that is taught in the schools of your profession?

A. Yes, sir.

Q. And the method that you pursued from the time that he came to your place until he left there, was that method the same method of treatment that is taught in your schools in your profession?

A. Yes, sir.

Q. Is there anything now that you think of that could have been done for him that was not done?

A. No, sir, not a thing.

Cross-Examination.

Q. (Mr. Landon). How far is your hospital located from the town of Port Angeles?

A. It is right in the city, part of Port Angeles.

Q. How far was it from the landing at the wharf?

A. Oh, I should judge it was about a mile.

Q. Possibly a mile and a half, is it not?

A. Well, it is a mile, anyway.

Q. It is a house that has been turned into a hospital?

A. It is a large dwelling house, yes, sir.

Q. How old are you?

A. I am 26.

Q. Fondahn was there how long?

A. I am not sure. It was six or seven days.

Q. Now you have an office down town?

A. Yes.

Q. It is near the water front? In other words, your hospital and your office are something over a mile apart?

A. Yes.

Q. Now, when was the first time that you saw Fondahn?

A. That morning he was hurt.

Q. Where?

A. At the hospital.

Q. How was he brought up?

A. I do not remember.

Q. Do not you remember bringing him up with a team yourself?

A. No, sir, I do not. I think my brother brought him up, if I remember.

Q. You have a team, a spring wagon, have you?

A. No, sir.

Q. What conveyance have you?

A. We have automobiles.

Q. Haven't you got a horse and buggy?

A. We used to have, at that time.

Q. We are talking about that time, doctor. Now, what time of day was this?

A. I should judge it was about between seven and eight in the morning when I saw him.

Q. What time did you usually go down to the office, you or your brother?

A. Oh, at that time my brother was living down town; he was at the office all the time.

Q. Living in the office?

A. Yes, sir.

Q. Rooming in the office?

A. Yes, sir.

Q. So that he was not staying at the hospital?

A. No, sir.

Q. What are your charges there, regular charges, doctor?

A. My brother looks after the business end of it. It is his hospital.

Q. You do not know?

A. No.

Q. Don't you know what you would charge for setting an arm?

A. Well, I know what I would charge myself.

Q. What would that be, doctor?

MR. HULBERT: I object as incompetent and immaterial.

A. Personally, I would charge a hundred dollars in a case of that kind.

Q. Now how much do you charge for the nursing in a case like this; how much would you charge for nursing him?

A. The nursing was included in the hospital.

Q. How much is your hospital fee, doctor?

A. I charge about fifteen dollars a week.

Q. That includes board?

A. Yes, sir.

Q. And nursing, does it?

A. Yes, sir.

Q. And room?

A. Yes, sir.

Q. And does that include the operating room, too?

A. No, sir.

Q. What would be the operating room charge, doctor?

A. Ten dollars for the operating room.

Q. That would be for the operating room.

A. And five dollars for the anesthetic.

Q. That would be thirty dollars?

A. Yes, sir.

Q. And he was there eight days?

A. I do not know how long he was there. I do not remember.

Q. Did you see that permit, doctor?

A. No, sir.

Q. Did you hear anything about it at all?

A. No, sir.

Q. Did you speak to Fondahn after he had been there a couple of days regarding him going to Port Townsend?

A. No, sir, I do not think so.

Q. You do not?

A. No, sir, I spoke to the man most every day.

Q. Did you go to him and ask him to go to Port Townsend?

A. No, sir.

Q. Doctor, as a matter of fact, you did not dress this arm at all after you got him there?

A. Yes, his arm was dressed every day.

Q. His arm was dressed every day?

A. Yes, sir.

Q. Now what was the occasion of his leaving, if you know?

A. Why, he left because he was going to the hospital at Port Townsend, of course.

Q. Did you say anything to him about leaving?

A. No, sir, I never said a word.

Q. You are sure you never said anything to him about that?

A. I never said a word. It is none of my business where he went.

Q. You do not remember going down and getting him that morning and bringing him up?

A. No, sir, I did not.

Q. You stayed at the hospital all the time?

A. I lived at the hospital.

Q. And your brother lived down town?

A. My brother lived down town at that time, yes.

Q. Did he take care of the office work?

A. Well, I had an office down town, too.

(Witness excused.)

MRS. LOUISE TAYLOR, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Hulbert). Where do you reside, Mrs. Taylor?

A. Port Angeles.

Q. You are the wife of Dr. Taylor, who just testified?

A. Yes, sir.

Q. And what, if any, profession have you?

A. I was a trained nurse.

Q. How much experience have you had in that work?

A. About eight years.

Q. Are you a graduate of any school?

A. The Chicago Polyclinic.

Q. When?

A. 1906.

Q. And how long have you lived at Port Angeles?

A. Three years.

Q. What, if any, connection have you had with the Olympic Hospital at Port Angeles?

A. I was head nurse.

Q. How long did you occupy that position.

A. A year and a half.

Q. Were you there in January, 1913, when Fondahn was there?

A. Yes, sir.

Q. Do you remember how many nurses there were?

A. We had two.

Q. And do you remember the occasion of Mr. Fondahn coming to the hospital, Mrs. Taylor?

A. I do.

Q. Were you present when he was taken to the operating room?

A. Yes, sir.

Q. Now, if you will just tell us what was done, as near as you can?

A. In the surgery, or before?

Q. From the time you first saw him until the time he was operated on?

A. He was brought from down town and put into a ward and a trained nurse gave him a bath before he was taken to the surgery, because he was very dirty, and he had a night gown put on him and was taken to the surgery, and I administered the anesthetic.

Q. Who else was present?

A. Oh, the other nurse, Miss Peterson, and two doctors.

Q. Your husband and Dr. W. J. Taylor?

A. Dr. W. J. Taylor.

Q. Now, just what was done?

A. Well, the wound was washed with antiseptics and iodine was put into the wound, and the bones, the fracture was set and the muscles were sewn, sterile dressing put on and then the splints.

Q. Can you describe these splints, Mrs. Taylor, to us?

A. Well, it had an inner splint on the inside of the arm above the elbow, and then two splints below the elbow, running from the elbow to the wrist; then he had another splint on the bottom of his hand to hold his fingers out.

Q. Now was this splint above, did it come back against the——

A. The inner part of the arm.

Q. Back against the inner part of the arm?

A. Yes, sir.

Q. Now do you know what is called extension splints in that kind of treatment?

A. Yes, sir.

Q. Were these the usual kind that were used?

A. Yes, sir.

Q. Then what, if any, bandages were put on?

A. Well, just cotton and bandages to hold the splints in place.

Q. For the purpose of holding the arm in place?

A. Yes, sir.

Q. Now then, what was done?

A. He was taken down stairs and put to bed.

Q. And what care did he receive after that time?

A. He had the ordinary nurse, the care of a ward patient.

Q. And what attention did the doctors give him?

A. Well, they dressed him every day after his temperature started, after they had left him alone for two

days, then his temperature came up and then unbound the arm and dressed it from that time on.

Q. Was the infection then in the arm?

A. Yes, sir.

Q. And did you, as head nurse, see him there every day?

A. Yes, sir.

Q. And were you present during the time that his arm was dressed?

A. Not always; the other nurse sometimes assisted with the dressing.

Q. And do you remember how long he was treated that was before he went to Port Townsend?

A. I think three or four days.

Q. And he was still infected when he went to Port Townsend?

A. Yes, sir.

Q. How many different hospitals did you work in, nurse in, Mrs. Taylor?

A. I spent a year and a half in my uncle's hospital in Arkansas; I spent a year at the Tacoma General as assistant head nurse, and gave the anesthetics.

Q. The treatment that this man received was the same kind of treatment that is ordinarily given in hospitals?

A. Yes, sir.

Q. Is your hospital equipped so that you could give proper treatment, in your opinion?

A. It is.

Cross-Examination.

Q. (Mr. Landon). Did you see him the day he went to Port Townsend?

A. I did.

Q. Did you see how he was bandaged that day, how his arm was?

A. I do not just remember.

Q. You gave the anesthetic in this case.

A. Yes, sir.

Q. That is part of your duty, is it?

A. Yes, sir.

Q. How many nurses did you have there at that time?

A. Two.

Q. Besides yourself?

A. No, myself included.

(Witness excused.)

Hearing adjourned.

Seattle, Washington, June 9, 1913.

PRESENT:

Mr. Landon, for the Libelant.

Mr. Hulbert, for the Claimant.

Libelant's Rebuttal Continued.

GUST FONDAHN, on the stand for further direct examination in rebuttal:

Q. (Mr. Landon). You may state what, if any, treatment you received during the time you were in the hospital at Port Angeles?

MR. HULBERT: I object on the ground that it has been gone into in the case in chief and is not rebuttal.

Q. I will ask a more specific question. State whether or not Mrs. Taylor, the head nurse at the hospital, treated you?

A. I only seen her about one minute all the time I was in the hospital, that was when I was chloroformed; she was the woman that chloroformed me, and after that she never was in the room with me, not one minute.

Q. State whether or not bandages were taken off from your arm?

A. There was nothing touched my arm, no splints and no bandage during the time I was in the hospital; I never seen my arm before I came to the marine hospital.

Q. From the time you went under the operation?

A. From the time I left the ship.

Q. You never saw your arm?

A. I never saw my arm until I came to the marine hospital.

Q. Was it bandaged at the time you were under chloroform—was it bandaged when you came out of the chloroform?

A. Two splints and two bandages on it, one on top of the other; that is the way it was during all of the time.

Q. State whether or not at the time you were in the hospital there, whether any of the doctors examined your arm or doctored it in any way?

A. None of the doctors touched my arm during the time I was there.

Q. Did any one?

A. No, nobody.

Q. Who was the nurse there or party in your ward—you were down below, were you?

A. There was one nurse in our room, supposed to attend to us, but she had the whole hospital to attend to.

MR. HULBERT: I object to that as an expression of opinion of the witness, and wholly incompetent and immaterial.

Q. Was she in your room some of the time?

A. She was in there occasionally; she never stayed in there any time.

Q. Was this down stairs where you were?

A. Downstairs in the room; two men in the room, me and Mr. McDonald, an old man.

Q. What became of him, do you know?

MR. HULBERT: I object as incompetent and immaterial.

A. He died.

Q. When did he die?

MR. HULBERT: I object as incompetent and immaterial.

A. Twelve months ago, I was told.

Q. And this other nurse that you speak about, not Dr. Taylor's wife, but the one that was in the room there, did she do the scrubbing and looking after all that?

A. Sweeping and fixing up.

Q. Do you know where she is at the present time?

A. No, I don't know where she is.

Q. Did you try to find out where she is?

A. I have been trying all over to find her; I tried to find her from Port Angeles but could not find her.

Q. When you left the hospital how did you go down to the boat?

MR. HULBERT: I object to that as being not rebuttal; it was gone into in chief and is wholly incompetent.

A. I walked down.

Q. Now then, what did you do after you got on the boat?

A. I had to stand up all the time; I could not sit down without hurting my arm.

Q. State whether or not you were careful from the time you left the hospital until you got to Port Townsend Hospital.

MR. HULBERT: I object to this line of testimony because it was gone into in the examination in chief, and is not rebuttal in any sense, and therefore it is incompetent.

MR. LANDON: I think I am entitled to show what he did.

A. I had my arm in splints, bandaged and in a sling; had a sling on my shoulder, a big wide towel; the arm was lying in the towel right along and I could not hurt it any way.

Q. Anything happen at all to it?

A. Nothing happened at all to it.

Q. When you were up here at the hearing, when Dr. Taylor and his wife testified, did you have an X-ray taken of your arm on that date?

A. Yes, sir.

Q. Who did you have it taken by?

A. Dr. Kingsley.

Q. Is this photograph which has been marked identification "D," the picture that was taken at that time?

A. This is supposed to be my arm, yes.

MR. LANDON: I offer this identification as evidence.

MR. HULBERT: I object to it as being incompetent and immaterial, but do not object to it on the ground that it is not shown that it is an X-ray of the libelant's arm.

Photograph marked libelant's exhibit "D" filed and returned herewith.

(No cross-examination.)

Testimony Closed.

United States of America, Western District of Washington, Northern Division—ss.

I, A. C. Bowman, a commissioner of the United States District Court for the Western District of Washington, residing at Seattle, in said district, do hereby certify that:

The foregoing transcript from page 1 to page 118, both inclusive, contains all of the oral testimony offered by the parties before me.

The several witnesses, before examination, were duly sworn to testify the truth, the whole truth and nothing but the truth.

I reduced the testimony of the witnesses to writing in short-hand and thereafter caused the same to be type-written, and I certify that the testimony herein contained is the testimony given by the several witnesses therein named.

Proctors for the parties waived the reading and signing of the testimony given by the witnesses, agreeing that when certified and returned into court by me that it should have the same force and effect as if so read and signed.

The several exhibits referred to in the testimony and index are returned herewith.

I further certify that I am not of counsel nor in any way interested in the result of this proceeding.

Witness my hand and official seal this 9th day of June, 1915.

U. S. Commissioner.

COMMISSIONER'S TAXABLE COSTS.

Libellant—

Hearings Oct. 23-28, 1913; March 30, June 9, 1915 -----	\$12.00
Administering oaths to three witnesses-----	.30
Marking and filing four exhibits-----	.40
Transcripts, 168 folios at 10c -----	16.80
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	\$29.50

Claimant—

Hearings Oct. 23, 1913; April 12-22, 1915----	\$ 9.00
Administering oaths to four witnesses-----	.40
Transcript 198 folios at 10c-----	19.80
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	\$29.20

Indorsed: Testimony. Filed in the United States District Court, Western District of Washington, Northern Division, June 15, 1915. Frank L. Crosby, Clerk. By E. N. Lakin, Deputy.

No. 2539.

GUST FONDAHN vs. "C. S| HOLMES."

SUPPLEMENTAL TESTIMONY.

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*In the District Court of the United States for the Western
District of Washington, Northern Division.*

GUST FONDAHN,

Libelant,

vs

Schooner "C. S. Holmes," etc.,

Respondent.

No. 2539.

To the Honorable Judges of the Above Entitled Court:

Pursuant to the order of reference herein, permitting further testimony to be taken in said cause, and on this 31st day of August, 1915, the libelant appeared in person and by Mr. Daniel Landon, his proctor, and the claimant appeared by Mr. Hulbert, of Ballinger, Battle, Hulbert & Shorts, its proctors; thereupon the following testimony was offered:

CLAIMANT'S FURTHER TESTIMONY.

DR. W. J. TAYLOR, recalled on behalf of the Claimant, testified as follows:

Q. (Mr. Hulbert). Dr. Taylor, you have already testified in this case. Since the testimony was closed the libelant has offered in evidence a letter purporting to have been written by you on January 10th, 1913, to the Marine Hospital at Port Townsend, when you sent Fondahn from your place to Port Townsend, as you have testified before. And the Court permits you to make explanation and offer further testimony in regard to this letter. I have a few questions I want to ask you about

it. First, I will ask you to examine this paper and see if it is a copy of the letter that you wrote?

A. Yes, sir, I think that is the letter that I wrote.

MR. HULBERT: The copy I show him, Mr. Landon, is the copy you furnished me.

MR. LANDON: The original is on file with the clerk. We might have it copied in the record.

MR. HULBERT: I will admit this is a copy of the one you have certified.

(Following is the letter shown witness.)

“Port Angeles, Wash., Jan. 10th, 1913.

“Surgeon-in-Charge, Marine Hospital, Port Townsend, Wash.:

“Dear Sir: The bearer is from the S. S. Holmes and was injured while at work on that boat and left off at Port Angeles and came under our care. He has an application blank for the Marine Hospital which we are inclosing. As we have no arrangement for this class we are sending him to you as soon as it is possible to move him. As we occasionally have patients from the different boats we would be glad to know if any arrangements could be made whereby we could treat them or administer first aid. If you would send us the information regarding this matter we would be grateful.

“In regard to patient we are sending he has a compound fracture of right arm below the elbow of both radius and ulna. We took an X-ray plate of it and by what that showed it would seem that it could not be got into position without plating. Hoping to hear from you

in regard to the case and in reference to acting in conjunction with the Marine Hospital Service,

“We remain yours fraternally,

“OLYMPIC HOSPITAL.

(Signed)

“Per J. W. Taylor.”

Q. Did you keep a copy of this letter in your files when you wrote it?

A. No, I don't think I have a copy.

Q. This, then, is a copy of the letter that you did write, in your judgment, to the Marine Hospital at Port Townsend when Mr. Fondahn went from your place to the Marine Hospital?

A. Yes, sir.

Q. You state in the letter, “The bearer is from the S. S. Holmes and was injured while at work on that boat and left off at Port Angeles and came under our care. He has an application blank for the Marine Hospital which we are enclosing.” Now, the application blank which you mention there, I will ask you if that is, or is not, the marine application—that is, the application to enter the Marine Hospital, that the captain of the vessel gave you, as you testified before in the case?

A. Yes, sir.

Q. You further state as follows: “As we have no arrangement for this class we are sending him to you as soon as it is possible to move him.” I will call your attention particularly to that part where you say “We have no arrangement for this class.” Explain what you mean by that?

A. We had with the Snohomish, we had a verbal agreement with the captain of the boat.

Q. That is a United States boat, is it?

A. That is a United States boat, to do their emergency work. I had gotten a number of other cases on merchant vessels, and did emergency work—just called to see sick men, or an accident, as I recall it now, and the boats paid me. And the arrangement that we would have would be for the government to pay us, for the Snohomish or any other boat that would take its place.

Q. As I understand you, then your idea was to have an arrangement with the government for merchant boats, the same as you had with government boats?

A. Yes, sir.

Q. I will ask you whether or not the government has contracts with private practitioners around at different places, at different ports, outside of Port Townsend?

A. Yes, sir, they have.

Q. I will ask you whether or not you have been trying and have since tried to get such a contract with the government?

A. Yes, I had been trying and had tried after this time. And tried to such an extent that the government issued papers asking for contracts and for us to give bids, and they awarded a contract the first of July of this year.

Q. To whom?

A. They were not awarded to me, but to another doctor. My contract was much higher. I think it was

through me that it was brought about, my dealing with the matter in starting it, and in this letter. And after that I wrote one to Captain Woolf of the Snohomish, and he told me about the merchant vessels, and had me write asking for a contract on the matter and the letter was attached, and then they sent out these papers, of course, to all the doctors, or many of them there. Three of them I know had letters sent them asking them to bid on the work, the same as I did. And I did bid, but I did not get it on account of my price.

Q. Now, where you say "As we have no arrangement for this class," did you mean to intimate by that that you had no arrangements for the taking care of Mr. Fondahn?

A. What I meant by that was, arrangements for merchant vessels; with the government I had arrangements with the captain.

Q. Now, "As we occasionally have patients from the different boats we would be glad to know if any arrangements could be made whereby we could treat them or administer first aid." Now, what did you mean by that?

A. Well, I meant, then treat them and do whatever work was necessary, that is, treat them altogether, if the government gave us a contract, and probably act in conjunction with the Marine Hospital as a branch. I don't know what they would term it.

Q. Further you state, "If you would send us the information regarding this matter we would be grateful." I will ask you whether that was intended by you, and was a general discussion regarding cases generally coming

off from merchant boats, without regard to this particular case?

A. It had no regard to the particular case. It was a general statement, so that, as I thought at the time, it would bring the matter, as it since happened, that they would offer a contract. I thought at the time that we could get a contract for it, and bid as we had done.

Q. As they have in other ports?

A. Yes, sir.

Q. Now, in another paragraph you state the following: "In regard to patient we are sending he has a compound fracture of right arm below the elbow of both radius and ulna." I think you have already testified to that?

A. Yes, sir.

Q. As to the extent of the injury. Further you state: "We took an X-ray plate of it and by what that showed it would seem that it could not be got into position without plating." Did you make an X-ray examination of the arm, doctor?

A. Yes, sir, before he left for Port Townsend, we did, we took an X-ray of the arm.

Q. Do you remember about when that was taken?

A. I cannot say just the exact date of that; it was some time before he left me, about a day or two days before he left; I could not be absolutely definite.

Q. Did you take an X-ray in the first instance when he first came, when you first set the bones?

A. When he first came?

Q. Yes.

A. No, there was no X-ray taken. We saw the bones were broken then without that. It was taken afterwards to see how the position was, or how it would set, and the condition it was in at that time.

Q. When he first came, as I remember your testimony, the bones were sticking out?

A. Yes, sir.

Q. And after sterilizing with antiseptics you placed the bones back into position with your fingers?

A. Yes, sir, the bones in the condition they were could be placed and laid together, with him under an anesthetic, you could do as you wished with the bones and place them any way you liked, and if we could have kept them wrapped up I think they would have stayed there. We took the bones and laid them together.

Q. Now doctor, you received my letter, did you, asking you to make further search for this X-ray plate?

A. Yes, sir.

Q. I will ask you whether or not you told me, in the first instance, that you had taken an X-ray plate and were unable to find it, before you even testified—that I requested you to make a thorough search for the X-ray?

A. Yes, sir.

Q. Did you try to find this X-ray?

A. I did try to find it. I think we took the X-ray on a glass plate and had it developed in that way, but did not have a photographer take it off, as you can understand.

Q. Did not have it developed?

A. Did not have it developed on cardboard. We took it on a glass plate, and I think it was disposed of. We had a number of X-ray plates that had faded out, and I feel that that was among them that we did not keep.

Q. What would have been done if there had been—what would have been done with it?

A. With what?

Q. You said you had a number of plates that faded, and I think you started to say that you had done something with them.

A. They were disposed of some place. We have a man in the hospital that took them away probably; we have a big box there where we dispose of them, and I suppose he carried them away and put them in the gulch or some place.

Q. Threw them away?

A. Threw them away.

Q. Who operates the X-ray machine at your hospital?

A. Either one of us does it, but my brother does most of that work.

Q. Do you remember which one of you did this?

A. I think my brother did the work.

Q. Were you present?

A. At the X-ray?

Q. Yes.

A. I cannot tell you definitely whether I was or not. I know I saw the plate that was taken afterwards, but I do not recollect being present. I cannot absolutely place

it but I know the picture was taken and I think he took it.

Q. And you have a man there who takes care of those things and looks after them?

A. We have a man clean up around, clean up the place, man to do general work around.

Q. Now what do you mean, doctor, when you say in your letter that in your opinion it could not be gotten into position without plating? What do you mean by that plating?

A. That it could not be got to unite into position unless it was held with plates.

Q. Why?

A. Because through the action of the muscles, and having to open up the arm each time it was done, there would be movement of the bones, separating them, both bones; there was no support, one bone for the other. But the plates would have been put on, in my judgment, when the infection held up, got the arm healed up, they would cut down and put on plates. We had the bones together; we set them together ourselves, and then we tied them up, and we took an X-ray and they were misplaced, and to get them together to unite, in my opinion, they needed wiring or a Lane's plate.

Q. Now, could that be done before the wound had healed up and the infection was cleared up?

A. No. It would not be done. It could be done, but of course that would be bad surgery to do that. Because then you would probably get the bone infected, as there

was considerable damage around the arm. The thing was to get it healed up and get the infection all out of it before that were attempted.

Q. I will ask you whether or not that was what you meant when you stated that it could not be gotten into position without plating?

A. Yes, that is what I meant; it could not be got to unite in position without plating. They could put it in position all right. You could give an anesthetic and cut down to the bones and put them right together, but we had no way of keeping them there then.

Q. What, if anything, was the condition that would retard or prevent the proper union of these bones?

A. The infection and the damaged tissue. The damaged tissue first, that was as soon as the accident happened the tissue was damaged. Later on infection took place.

Q. What about the periosteum, this covering to the bone, is that what you mean?

A. Both that and the muscles. Of course the damage to the muscles would heal up, but the periosteum is a factor in the healing of the bone.

Q. You further state, "Hope to hear from you in regard to the case and in reference to acting in conjunction with the marine hospital service. We remain yours fraternally, Olympic Hospital, per W. J. Taylor." Did you hear afterwards from the case?

A. Never heard a word from them.

Q. You did hear something further about acting in conjunction with the Marine Hospital?

A. Not from the Marine Hospital there. We took that up through I think it was Washington. I wrote a letter on to them. But we never had a word from the Marine Hospital in Port Townsend. I never received a letter from them in my life. Did I ask about the case?

Q. You said, "Hoping to hear from you in regard to the case and in reference to acting," etc.
to have known how it got along, how they managed, or what they did, and all about the case afterwards, just having had that connection with it.

A. I presume, having started the case, I would like

Cross-Examination.

Q. (Mr. Landon). Doctor, when was this letter written?

A. The date will be on it.

Q. That was the correct date, the date you wrote the letter? You wrote the letter yourself?

A. Yes, sir.

Q. He left on January 11th, didn't he? Evidently you wrote this letter the day before he left, didn't you, doctor?

A. Whatever the date is there. I cannot tell you when I wrote the letter. I presume the date shows when it was written.

Q. Doctor, was the X-ray taken about four days after you first treated him, do you remember?

A. I would not tell you exactly the date. I presume about that time.

Q. That X-ray was taken with the splints and bandages on, the same as they were after the first treatment, do you remember?

A. That I do not recollect. It was just taken so we would get a picture of it.

Q. (Mr. Hulbert). Was the X-ray taken before or after the infection developed?

A. I would say after.

Q. I think your testimony shows that on Tuesday or Wednesday the infection appeared?

A. Yes.

Q. And I think your testimony already shows that as soon as the infection did appear you took down the bandages?

A. Yes, we took down the bandages.

(Witness excused.)

GUST FONDAHN, libelant, recalled, testified in his own behalf as follows:

Q. (Mr. Landon). Do you remember this X-ray being taken?

A. Yes, it was taken on Thursday.

Q. You arrived on a Saturday and it was taken on Thursday?

A. Yes.

Q. Was the bandage on or off your arm at that time?

A. The bandages and splints and everything was on my arm.

Q. The same as they were first, or not?

A. The same as when I came out from under the chloroform.

Q. Had the bandages been taken off at any time?

A. No, not while in the hospital.

Cross-Examination.

Q. (Mr. Hulbert). You had infection in your arm at that time, didn't you?

A. I don't know anything about it.

Q. (Mr. Landon). Did they ever say anything about infection or treat you in any way for infection?

A. No, no temperature was taken.

MR. HULBERT: That has all been gone into before.

(Witness excused.)

Testimony Closed.

United States of America, Western District of Washington, Northern Division—ss.

I, A. C. Bowman, a commissioner of the United States District Court for the Western District of Washington, residing at Seattle, in said district, do hereby certify that:

The foregoing transcript, from page 1 to page 12, both inclusive, contains all of the testimony offered by the parties under the order of reference herein.

The witnesses, before testifying, were duly sworn

to testify to the truth, the whole truth, and nothing but the truth.

I reduced the testimony to writing in short-hand and thereafter caused the same to be typewritten, and I certify that it is the testimony given by the witnesses in said cause.

Proctors for the parties waived the reading and signing of the testimony by the witnesses, agreeing that it should have the same force and effect as if read and signed by them.

I further certify that I am not of counsel nor in any way interested in the result of this suit.

Witness my hand and official seal this 1st day of September, 1915.

U. S. Commissioner.

COMMISSIONER'S TAXABLE COSTS.

Claimant—

Hearing August 31, 1915-----\$3.00

Transcribing 45 folios ----- 4.50

\$7.50

Indorsed: Supplemental Testimony. Filed in the United States District Court, Western District of Washington, Northern Division, Sept. 2, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy.

*United States District Court, Western District of Wash-
ington, Northern Division.*

GUST FONDAHN,

Libelant,

vs.

SCHOONER "C. S. HOLMES,"

Respondent.

No. 2539.

Filed September 14, 1915.

Daniel Landon, for Libelant.

Ballinger, Battle, Hulbert & Shorts, for Respondent.

NETERER, District Judge.

This is a suit in admiralty for injuries received by libelant while he was a sailor on the schooner "C. S. Holmes." On the afternoon of January 3, 1913, when the schooner was about ten miles off Cape Flattery the libelant received a compound fracture of his right arm. Both bones of the forearm were broken, "the periosteum was broken and torn along the end both ways. A circular wound about one and one-half inches in diameter through which both bones projected, and it showed a very ragged wound. The muscles were torn and the periosteum torn back. A very ugly wound." The injury occurred about six o'clock p. m. The wound was dressed by the master and sailors. The master "put the vessel around and sailed back." The tug that had taken the vessel to sea had returned and was out of sight. The wind was fair and the vessel proceeded on the course to Cape Flattery. When the schooner got off Neah Bay the tug "Prosper" was obtained to tow her to Port

Angeles. The schooner arrived at Port Angeles between five and six o'clock the next morning. The master of the schooner made inquiry as to a doctor and ascertained from the captain of the tug "Goliah" and also from the tug "Prosper," and from the "Snohomish," a government vessel and employed in and about Port Angeles, that there was a doctor at Port Angeles. Libelant was immediately taken to Dr. Taylor's office at Port Angeles, and upon advice of the doctor was taken to the hospital owned and operated by him, and about eight o'clock in the morning the arm was dressed. The master of the ship gave the doctor a permit to admit the libelant to the Marine Hospital at Port Townsend, to which place he was taken as soon as he could move. Before landing at Port Angeles libelant requested of the master that he be taken to the Marine Hospital at Port Townsend. The distance from Port Angeles to Port Townsend is from three to six hours. Libelant remained in the hospital with Dr. Taylor at Port Angeles, and under his care and treatment, until January 11th, at which time, at the suggestion of Dr. Taylor, he went to the Marine Hospital at Port Townsend. Dr. Taylor treated the wound, but after several days some complications set in and the arm "began to fester," and it later developed that the bones had not been in apposition and did not unite and have not united at this time; that at the Marine Hospital an operation was performed and Lane plates applied, but that no cure has been effected, and that a further operation will be necessary, the result of which cannot be assured.

The contention of the libelant is that the master was negligent in the duty which he owed to him in not taking him to the Marine Hospital at Port Townsend, and in taking him to a doctor at Port Angeles. It is further contended that he failed to make any arrangement with Dr. Taylor at Port Angeles for compensation, and that by reason of that libelant did not get the treatment which was necessary, and that he was compelled to pay, and did pay, to Dr. Taylor the sum of \$30.00 for treatment which he had received, and contends that the treatment given by Dr. Taylor was not proper, and that by reason thereof his arm has been destroyed, and asks compensation. Respondent contends that it was the duty of the master to take the injured sailor to the nearest medical service, and that the performance of this duty discharged the vessel from any further obligation, and insists that the treatment accorded to libelant was proper treatment, and that even though it were not, that the respondent cannot be held for any malpractice on the part of the physician; that the only duty which devolved upon the vessel was to exercise its best judgment, acting as a reasonably prudent person, in obtaining proper medical skill, and that its duty was performed.

The greater part of the briefs in this case have been devoted to the discussion of the treatment which was given to the libelant by the attending physician. This, I do not think, can be of much aid to the court in determining the issue which is presented here. The issue, as I view it, is: Did the master discharge his legal duty

in securing the services of a physician and surgeon for the libelant? It was the duty of the master, upon the sailor's injury, to afford him every relief at hand and to furnish him with medical attendance at the earliest possible moment. *The Troop*, 128 Fed. 156. The first question to be determined in this case is whether the master did discharge his duty towards the libelant in affording him the proper medical attendance. If that is determined in favor of the master the case is ended; if not, then it must be determined whether he was furnished with the proper medical attendance. The master testifies that he put into Port Angeles because the injury had occurred about twelve hours prior to his arrival there; that it would have taken until the afternoon of that day to reach Port Townsend. Other witnesses say from three to six hours. And the master says that he believed it was his duty to go into the first port where medical assistance could be obtained, and that he made inquiry from the various captains of the several tugs and they all stated that there was a physician and surgeon at Port Angeles, and he understood him to be a marine doctor. It is conceded, I think, by the record, that the doctor in whose custody the libelant was placed was a regularly licensed and practicing physician. There were eleven physicians in the city, and two hospitals, one of which was owned and conducted by Dr. Taylor, the physician employed by the master. The testimony also shows that the physician employed had been employed prior to that time in emergency cases by the United States

ship "Snohomish," which was lying at Port Angeles, and that the captain of that ship suggested the doctor or confirmed the master's inquiry with relation to this physician. The doctor himself says, and this is not contradicted, that he was appointed surgeon for the Milwaukee Railroad; that he has a contract for the Port Crescent Shingle Mill Company; the Howell, Hill & Ray Shingle Mill Company; Hanson, Ballard Shingle & Saw Mill Company, and the Merrill Mill Company; also that he has a contract with the county to do the county medical work, and also was the doctor for the Erie Construction Company while they were building roads there; and that he engaged in general practice. He says that his hospital is equipped with all of the modern appliances and conveniences for medical service and treatment, and that there is not a better equipped hospital in the state. The testimony in this case, if true, and there is no evidence in the record which overcomes the burden of proof, shows that the master exercised all reasonable diligence and fulfilled his legal obligation in the providing of the medical attendance which was done. It would have been better, no doubt, if this libelant could have been taken to the Marine Hospital at Port Townsend. His arm was very severely injured. I doubt whether an injury of this kind could have been much more severe. Twelve hours had already elapsed from the time of the injury. The man was suffering much pain. Information with relation to the physicians at Port Angeles was obtained, it would seem, from authoritative sources. Investigation showed

equipment for treating cases of this character which was ample, and there is nothing that occurs to me now that was presented that should have cast a suspicion upon a conclusion of the competency of the physician, on the part of the master. The fact that the master gave to the physician a permit, as testified to by the libelant, upon a false statement or representation as to the physician's compensation, can, under the testimony of the master and the physician himself, have no controlling influence. The physician did accept the patient; did treat him for the period of eight days, if the testimony of the two doctors and the nurse is to be believed, and there is nothing in the record that would justify the court in disregarding this evidence. Each case, as stated by the Supreme Court of the United States, in the *Iriquos*, 194 U. S. 240, must be determined upon its own circumstances, having reference to the seriousness of the injury, and it seems to me that under all of the circumstances in this case as disclosed by the evidence, the master cannot be held to such negligence in placing the libelant in the care of the physician at Port Angeles as to justify a recovery in this case. The accident is most unfortunate. The condition of the libelant's arm is very unsatisfactory. It will require further operation. But the fact that it is in this condition does not of itself support recovery. If the libelant was improperly treated the vessel could not be held unless default is first shown on the part of the master. The duty of the master was fully performed when he exercised the care which the evidence shows

in this case, to select a reasonably competent physician, and the vessel is responsible only for the negligence of the master in the discharge of this duty and not for that of the physician which was employed. *Laubhein v. Netherlands S. S. Co.*, 13 N. E. 781; *Campbell v. Frank Gilmore*, 43 Fed. 318; *Union Pacific Railway Co. v. Artist*, 60 Fed. 365. There is no evidence in this case that the physician employed was incompetent. There is no testimony of physicians other than those employed by the master and the physicians at the Marine Hospital, and the most that can be said of the testimony is that the physician of the Marine Hospital stated that he would have employed a different treatment. But there is no evidence that the treatment that was given by Dr. Taylor was not proper treatment and not such treatment as is recognized by medical science, and the mere fact that a different treatment would have been adopted by the marine doctor would not be evidence against the method that was adopted (*Lorenz v. Booth*, Vol. 42 Wash. Dec. page 303), and the mere fact that infection occurred would not lend support to libellant's contention of either negligence or incompetency. *Peterson v. Wells*, 41 Wash. 693. The fact that the physician who was employed by the master took charge of the case and gave the treatment and applied methods recognized and approved by those reasonably skilled in the profession, confirms the conclusion and conduct of the master, and does not incur liability on failure to cure, if the treatment is given with a reasonable degree of skill and care (*Wells v. Ferry-Baker Lumm*

ber Co., 67 Wash. 658), and failure to effect a cure, of itself, does not in any sense show negligence on the part of the physician. *Hoffman v. Watkins*, 78 Wash. 118.

I think that the vessel is liable for the amount of money which was paid by the libelant to the physician in effecting a cure, which was thirty dollars, and is also liable for the regular wage on the trip, which, from the evidence, I think is established, was forty-five dollars.

JEREMIAH NETERER, Judge.

Indorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Sept. 14, 1915. Frank L. Crosby, Clerk. By E. Mfl L., Deputy.

In the United States District Court for the Western District of Washington, Northern Division.
In Admiralty.

GUST FONDAHN,

Libelant,

vs.

SCHOONER "C. S. HOLMES,"

Respondent.

No. 2539.

DECREE.

This cause came on regularly to be heard upon the amended libel of the libelant and the answer to the amended libel and the reply thereto, the testimony having been taken before A. C. Bowman, Esq., United States Commissioner, to whom the matter was referred, the libelant and the respondent having submitted briefs, and the Court being fully advised in the premises made and entered, its memorandum decision upon the merits, filed

September 14, 1915, wherein it found that the libelant was not entitled to damages for the second cause of action, and that he was entitled to judgment for the sum of Thirty (\$30.00) Dollars for money expended for medical treatment, as set forth in the third cause of action, and for the sum of Forty-five (\$45.00) Dollars, as set forth in the fourth cause of action.

In pursuance of the memorandum decision heretofore filed in the above entitled action, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the libelant have and recover nothing against the respondent for the second cause of action, and have and recover the sum of Thirty (\$30.00) Dollars against the respondent upon the third cause of action, and the further sum of Forty-five (\$45.00) Dollars against the respondent in the fourth cause of action, together with the libelant's costs.

Libelant excepts to the memorandum decision and to this decree and to the entering of the same, each and every part thereof, as to the second cause of action, which exceptions are allowed. Respondent objects to the allowance of costs to libelant.

Done in open court this 4th day of October, 1915.

JEREMIAH NETERER, Judge.

Service of the within decree by delivery of a copy to the undersigned is hereby acknowledged this 27th day of September, 1915.

BALLINGER, BATTLE, HULBERT & SHORTS,
Proctors for Respondents.

Indorsed: Decree. Filed in the United States District Court, Western District of Washington, Northern Division, October 4, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

*In the United States District Court for the Western Dis-
trict of Washington, Northern Division.
In Admiralty.*

GUST FONDAHN,

Libelant,

vs.

SCHOONER "C. S. HOLMES," etc.,

Respondent.

No. 2539.

NOTICE OF APPEAL.

SIRS:

Take notice that the libelant above named hereby
appeals to the United States Circuit Court of Appeals
for the Ninth Circuit from the final decree, entered herein
October 4th, 1915.

Yours respectfully,

DANIEL LANDON,

Proctor for Libelant and Appellant.

To Ballinger, Battle, Hulbert & Shorts,

Proctors for Respondent and Appellee.

FRANK L. CROSBY,

Clerk of the United States District Court for the Western
District of Washington, Northern Division. In
Admiralty.

Service of the within Notice of Appeal by delivery
of a copy to the undersigned is hereby acknowledged this
5th day of October, 1915.

BALLINGER, BATTLE, HULBERT & SHORTS,

Proctors for Respondent.

ED. M. LAKIN, Deputy Clerk.

Indorsed. Notice of Appeal. Filed in the United
States District Court, Western District of Washington,
Northern Division, October 4, 1915. Frank L. Crosby,
Clerk. By Ed M. Lakin, Deputy.

*In the United States District Court for the Western Dis-
trict of Washington, Northern Division.
In Admiralty.*

GUST FONDAHN,	Libelant, } No. 2539. Respondent. }
vs.	
SCHOONER "C. S. HOLMES," etc.,	

PETITION ON APPEAL, WITH ALLOWANCE ENDORSED.

TO THE HONORABLE JEREMIAH NETERER:

The above named libelant conceiving himself aggrieved by the order, findings and final decree made and entered by the above named Court wherein and whereby, among other things, it was found and decreed that the libelant take nothing by reason of the damages suffered by him, as set out in the second cause of action in the amended libel, the said libelant does hereby appeal from said finding and decree and prays that libelant's petition for his said appeal be allowed and that a transcript of the records, proceedings and papers, namely: the Amended Libel, Respondent's Answer, Libelant's Reply, all testimony taken and exhibits offered in evidence, the opinion of the Court and the Final Decree, and that the same be duly authenticated and be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

DANIEL LANDON,

Proctor for Libelant.

The foregoing petition on appeal is granted, and the demands therein made, allowed.

Dated October 14th, 1915.

JEREMIAH NETERER, Judge.

Service of the within Petition on Appeal by delivery of a copy to the undersigned is hereby acknowledged this 6th day of October, 1915.

BALLINGER, BATTLE, HULBERT & SHORTS,
Attorneys for Respondent.

Indorsed: Petition on Appeal with Allowance Indorsed: Filed in the United States District Court, Western District of Washington, Northern Division, October 14, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

*In the United States District Court for the Western
District of Washington, Northern Division.
In Admiralty.*

GUST FONDAHN,	} <i>Libelant,</i>	} No. 2539
<i>vs.</i>		
SCHOONER "C. S. HOLMES",		

ASSIGNMENT OF ERRORS.

Comes now the above named Gust Fondahn, libelant in the above entitled cause, and says that in the record and proceedings in said cause and in the decision of the Court and the final decree, made and entered therein on the 4th day of October, 1915, there are manifest errors in the following particulars:

I.

The Court erred in finding that the master discharged his duty toward the libelant in affording him proper medical attendance.

II.

The Court erred in finding that the master discharged his duty toward the libelant prior to the time he was put ashore at Port Angeles.

III.

The Court erred in failing to find that the master performed his duty toward the libelant in any particular.

IV.

The Court erred in finding that the libelant received proper treatment, or any treatment at all, after he was first attended.

V.

The Court erred in not finding the allegations of the amended libel to be substantiated.

VI.

The Court erred in not entering judgment for libelant as prayed for against the respondent in the second cause of action.

WHEREFORE, libelant prays that the said decree may be reversed, modified and corrected in the particulars herein set forth, and such decree entered therein as ought to have been entered by the said District Court.

DANIEL LANDON,

Proctor for Libelant.

Service of the within Assignment of Errors by delivery of a copy to the undersigned is hereby acknowledged this 9th day of Oct., 1915.

BALLINGER, BATTLE, HULBERT & SHORTS,

Attorney for Respondent.

Indorsed: Assignment of Errors. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Oct. 14, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

*In the District Court of the United States for the Western
District of Washington, Northern Division.
In Admiralty.*

GUST FONDAHN,

Libelant,

vs.

SCHOONER "C. S. HOLMES",

Respondent.

No. 2539

COST BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, That we, Gust Fondahn, Libelant in the above entitled action, as principal, and the New England Equitable Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, and authorized to transact business as surety in the State of Washington, as surety, are held and firmly bound unto the Schooner "C. S. Holmes", in the sum of Two hundred fifty (\$250.00) dollars, lawful money of the United States, to be paid to the Schooner "C. S. Holmes", for the payment of which sum well and truly to be made, we bind

ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Scaled with our seals and dated this 6th day of Oct., 1915.

WHEREAS, the above bounden principal, Gust Fondahn, as Appellant, has prosecuted an appeal to the United States Circuit Court of the United States, bearing date of 6th day of October, 1915, in a suit wherein Gust Fondahn is libellant against the Schooner "C. S. Holmes", her tackle, apparel, etc.:

Now, therefore, the condition of this obligation is such that if the above named appellant, Gust Fondahn, shall prosecute said appeal with effect, and pay all costs which may be awarded against him, as such appellant, if the appeal is not sustained, then this obligation shall be null and void; otherwise to remain full force and effect.

In testimony whereof, witness our hands and seals the day and year first above written.

GUST FONDAHN,

(Seal.)

Principal.

NEW ENGLAND EQUITABLE INSURANCE CO.

And George M. Crawford, Attorney in Fact.

By Robert E. Dwyer, Attorney in Fact,

By SEELEY & CO.,

Attest: By Geo. M. Crawford.

General Agents.

The above bond approved this 14th day of Oct., A. D. 1915.

JEREMIAH NETERER, Judge.

Service of the within Cost Bond by delivery of a copy to the undersigned is hereby acknowledged this 6th day of Oct., 1915.

BALLINGER, BATTLE, HULBERT & SHORTS,

Attorneys for Respondent.

Indorsed: Cost Bond on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Oct. 14, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

GUST FONDAHN,

Libelant,

vs.

SCHOONER "C. S. HOLMES", her
tackle, apparel, furniture, etc.,

Respondent.

No. 2539

ORDER.

Now on this 19th day of October, 1915, upon motion of Proctor for Libelant and for sufficient cause appearing:

IT IS ORDERED That the Libelant's exhibits A, B, C and D filed and introduced as evidence upon the trial of this cause, be by the Clerk of this Court forwarded to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, there to be inspected and considered, together with the transcript of the record on appeal in this cause.

JEREMIAH NETERER, District Judge.

Indorsed: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Oct. 19, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

*In the United States District Court for the Western
District of Washington, Northern Division.
In Admiralty.*

GUST FONDAHN,

Libelant,

vs.

SCHOONER "C. S. HOLMES", Etc.,

Respondent.

No. 2539

STIPULATION.

Is is hereby stipulated by and between the proctor for libelant and respondent that the record on appeal shall contain only the amended libel, respondent's answer, all testimony taken and exhibits offered in evidence, the opinion of the Court, the final decree, notice of appeal, petition on appeal with allowance endorsed, assignment of errors, and cost bond on appeal.

DANIEL LANDON,

Proctor for Libelant.

BALLINGER, BATTLE, HULBERT & SHORTS,

Proctors for Respondent.

Service of the within Stipulation by delivery of a copy to the undersigned is hereby acknowledged this 6th day of Oct., 1915.

BALLINGER, BATTLE, HULBERT & SHORTS,

Attorneys for Respondent.

Indorsed: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Oct. 14, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

*In the United States District Court for the Western
District of Washington, Northern Division.
In Admiralty.*

GUST FONDAHN,	} Libelant,	No. 2539.
<i>vs.</i>		
SCHOONER "C. S. HOLMES," Etc.,		
<i>Respondent.</i>	}	

STIPULATION

It is hereby stipulated by and between the proctor for the libelant and proctors for respondent, that the exhibits be not put in the printed record but that the originals be sent to the Circuit Court of Appeals and considered the same as if copies were printed.

DANIEL LANDON,

Proctor for Libelant.

BALLINGER, BATTLE, HULBERT & SHORTS,

Proctors for Respondent.

In the United States District Court for the Western District of Washington, Northern Division.

GUST FONDAHN,	} <i>Libelant,</i>	} <i>In Admiralty.</i>
<i>vs.</i>		
SCHOONER "C. S. HOLMES," Etc.,		
<i>Respondent.</i>	} No. 2539	

ORDER EXTENDING TIME TO FILE APOSTLES ON APPEAL.

Good cause appearing therefore, it is ordered that Gust Fondahn, libelant in the above cause, may have to and including the 8th day of December, 1915, within which to procure to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the Apostles on Appeal in the above entitled cause, certified by the Clerk of the above named court.

Done in open Court this 8th day of November, 1915.
O. K.—ROBT. A. HULBERT.

JEREMIAH NETERER, Judge.

Service of the within Order by delivery of a copy to the undersigned is hereby acknowledged this 5th day of Nov., 1915. Proctor for Respondent.

Indorsed: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 8, 1915. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

*In the District Court of the United States for the Western
District of Washington, Northern Division.*

GUST FONDAHN,

Libelant,

vs.

SCHOONER "C. S. HOLMES", her
tackle, apparel, furniture, etc.,

Respondent.

No. 2539

**CERTIFICATE OF CLERK U. S. DISTRICT COURT TO
APOSTLES, ETC.**

United States of America,

Western District of Washington,

} ss.

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify the foregoing pages, numbered from 1 to 181, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as are necessary to the hearing of said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and as is called for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitutes the record on appeal to the said Circuit Court of Appeals for the Ninth Circuit from the judgment of said United States District Court for the Western District of Washington.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the Proctor for Libelant, for making record, certificate or return

to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to-wit:

Clerk's fee (Sec. 828 R. S. U. S.) for making record, certificate or return, 384 folios at 15c----	\$ 55.60
Certificate of Clerk to transcript of record, 4 folios at 15c -----	.60
Seal to said Certificate-----	.20
Certificate of Clerk to Original Exhibits, 3 folios at 15c -----	.45
Seal to said Certificate-----	.20
Statement of cost of printing said transcript of record, collected and paid-----	^{158.95} 233.75
Total-----	^{216.00} \$290.80

I hereby certify that the above cost for preparing and certifying record, amounting to ^{216.00}~~\$290.80~~, has been paid to me by Daniel Landon, Esquire, Proctor for Appellant.

I further certify that I hereto attach and herewith transmit the original Citation issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court at Seattle, in said District, this 1st day of December, 1915.

FRANK L. CROSBY,
(Seal.) Clerk United States District Court.

*In the District Court of the United States for the Western
District of Washington, Northern Division.*

GUST FONDAHN,	} No. 2539
<i>Libelant,</i>	
<i>vs.</i>	
SCHOONER "C. S. HOLMES", Etc.,	}
<i>Respondent.</i>	

CITATION ON APPEAL.

UNITED STATES OF AMERICA, SS.:

The President of the United States to Schooner "C. S. Holmes," Respondent herein, and to Ballinger, Battle, Hulbert and Shorts, Its Proctors, herein, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, California, within thirty (30) days from the date hereof, pursuant to an appeal to the said Court duly filed in the office of the Clerk of the United States District Court for the Western District of Washington, Northern Division, wherein the said Gust Fondahn is appellant, and you, the Schooner "C. S. Holmes," are appellee, then and there to show cause, if any there be, why the decree of the United States District Court for the Western District of Washington, Northern Division, in the above entitled cause, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS THE HONORABLE EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States of America, this 18th day of October, 1915.

JEREMIAH NETERER,

(Seal.) Judge of the United States District Court,
for the Western District of Washington.

Service of the within Citation on Appeal by delivery of a copy to the undersigned is hereby acknowledged this 18th day of October, 1915.

BALLINGER, BATTLE, HULBERT & SHORTS,

Attorneys for Respondent.

Indorsed: Original. No. 2539. In the District Court of the United States for the Northern Division, Western District of Washington. Gust Fondahn, Plaintiff, vs. Schooner "C. S. Holmes," Defendant. Citation on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Oct. 18, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. Service of papers in this case may be made on Daniel Landon, Proctor for Libelant. 1054-5-6 Empire Bldg., Seattle, King County, Washington. Phone Main 4602.

